



Montana Legislative History

Chapter: 668 Session L: 1989 **Checklist of Bill History**

Bill Number: 757 House/ Senate

History and Final Status Sheet



Introduced Bill



Fiscal Note



Third Reading Bill



Final Version of Bill



House

Committee:

Natural Resources

Hearing Date(s):

3-10-89

3-17-89

Committee Report:

Senate

Committee:

Natural Resources

Hearing Date(s):

4-5-89

4-10-89

Committee Report:

Conference Committee

Hearing Date(s):

Conference Committee Report:

Compiler Notes

Compiled by: Sonia Gavin

Date: 11-3-23

Notes:

HOUSE BILL NO. 757

INTRODUCED BY GIACOMETTO, WEEDING, BECK, O'KEEFE,
MARKS, HARPER, DEMARS, THOFT

IN THE HOUSE

MARCH 2, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
MARCH 3, 1989	FIRST READING.
MARCH 20, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
MARCH 21, 1989	PRINTING REPORT.
MARCH 29, 1989	SECOND READING, DO PASS AS AMENDED.
MARCH 30, 1989	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 97; NOES, 2.
	TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 31, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
	FIRST READING.
APRIL 11, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
APRIL 12, 1989	SECOND READING, CONCURRED IN.
APRIL 13, 1989	THIRD READING, CONCURRED IN. AYES, 47; NOES, 0.
	RETURNED TO HOUSE.

IN THE HOUSE

APRIL 14, 1989	RECEIVED FROM SENATE.
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SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *HOUSE* BILL NO. 757
 2 INTRODUCED BY *James W. Wynn, Bill J. Jaffe*
 3 *Mark Hager*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH AN
 5 AGRICULTURAL CHEMICAL GROUND WATER PROTECTION PROGRAM TO BE
 6 ADMINISTERED BY THE DEPARTMENT OF AGRICULTURE AND THE
 7 DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES; TO REQUIRE
 8 ESTABLISHMENT OF AGRICULTURAL CHEMICAL GROUND WATER QUALITY
 9 STANDARDS; TO PROVIDE FOR GROUND WATER MONITORING AND
 10 AGRICULTURAL CHEMICAL GROUND WATER MANAGEMENT PLANS; TO
 11 PROVIDE FOR ENFORCEMENT AUTHORITY, COMPLIANCE ORDERS, AND
 12 PENALTIES; TO DIRECT THE DEPARTMENT OF HEALTH AND
 13 ENVIRONMENTAL SCIENCES TO AMEND CERTAIN RULES IMPLEMENTING
 14 THE WATER QUALITY ACT; TO ESTABLISH ADDITIONAL FEES FOR
 15 REGISTRATION OF PESTICIDES AND FERTILIZERS; TO CREATE
 16 AGRICULTURAL CHEMICAL GROUND WATER PROTECTION ACCOUNTS;
 17 AMENDING SECTIONS 75-5-105, 75-5-301, 80-8-105, 80-8-107,
 18 AND 80-8-305, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

20 STATEMENT OF INTENT

21 A statement of intent is required for this bill in
 22 order to provide guidance to the department of agriculture
 23 and the department of health and environmental sciences
 24 concerning the administration of the provisions of the bill
 25 and the adoption of rules.

1 Because the departments share responsibility for
 2 certain duties established by the bill, the departments
 3 shall coordinate their rulemaking efforts and whenever
 4 possible adopt identical rules for the areas of shared
 5 responsibility, including:

6 (1) ground water monitoring as authorized by [sections
 7 10 and 11];

8 (2) field and laboratory operational quality
 9 assurance, quality control, and confirmatory procedures as
 10 authorized by [sections 7, 10, and 11];

11 (3) maintenance of confidentiality of certain data as
 12 required by [section 8]; and

13 (4) administrative civil penalties as authorized by
 14 [section 22].

15 In adopting rules pertaining to quality assurance,
 16 quality control, and confirmatory procedures, the
 17 departments shall include the following:

18 (1) confirmation of analytical results by two
 19 different analytical methodologies if two methodologies
 20 exist; and

21 (2) either resampling and analysis within 30 days of
 22 original sampling and analysis or splitting and analysis of
 23 samples by two or more laboratories approved by the
 24 department of agriculture and the department of health and
 25 environmental sciences.

1 A monitoring program implemented by the department of
2 agriculture or the department of health and environmental
3 sciences must be designed to enable the departments to make
4 the following determinations, as applicable, whether:

5 (1) the agricultural chemical has entered ground water
6 as a direct result of use according to its label or as a
7 result of misuse;

8 (2) the agricultural chemical has a reasonable
9 probability of entering ground water due to migration
10 through soil;

11 (3) the level of the agricultural chemical in the
12 ground water or its rate of migration through soil is
13 increasing or decreasing with respect to standards and
14 interim numerical standards required by [section 9];

15 (4) the predictive procedures and data used to
16 establish the monitoring program are reliable; and

17 (5) the ground water has beneficial human or
18 environmental uses based on its classification.

19 The department of agriculture or the department of
20 health and environmental sciences shall give priority to
21 developing monitoring programs for agricultural chemicals
22 that the departments identify as likely to enter or as
23 having entered ground water based on predictive procedures
24 that provide a high degree of scientific certainty and that
25 are appropriate to the geographical areas where the

1 agricultural chemicals are used.

2 If the department of health and environmental sciences
3 finds it necessary to issue compliance orders to a person to
4 clean up ground water that has been impaired by use of
5 agricultural chemicals in violation of Title 75, chapter 5
6 or 6, it may, based on technical feasibility and economic
7 considerations, order the ground water to be cleaned up to a
8 level that is lower than the applicable standard or interim
9 numerical standard if the following findings are made:

10 (1) the agricultural chemical can be confined to
11 either the source, a specific property boundary, or the
12 defined areal extent of the agricultural chemical plume;

13 (2) the ground water will not be used for drinking
14 purposes or no health risks will exist at a level of cleanup
15 that is lower than the applicable standard or interim
16 numerical standard;

17 (3) the agricultural chemical will not cause other
18 ground water impairment; and

19 (4) the responsible party has agreed to comply with an
20 existing agricultural chemical ground water management plan
21 or a plan under development but not finalized by rule at the
22 time of the determination by the department of health and
23 environmental sciences.

24 The board of health and environmental sciences is
25 responsible for adoption of certain ground water quality

standards for agricultural chemicals as required by [section 9]. The board shall adopt appropriate rules as necessary to comply with the special requirements and considerations that apply to the adoption of these standards as specified in [section 9], including acquisition of current and scientifically valid data from the United States environmental protection agency (EPA) and other sources and communications with EPA concerning the content and status of promulgated federal standards, nonpromulgated federal standards, and other relevant EPA regulations and materials.

In adopting rules to regulate the adoption of interim numerical standards, the board shall include the following criteria:

(1) use of any significant new and relevant technical information;

(2) reliance on valid scientific methodologies, protocols, and procedures;

(3) priority consideration of information and evidence that has been subjected to peer review, has resulted from more than one study, and is consistent with other credible medical or toxicological evidence; and

(4) consultation with the department of agriculture and EPA regarding any assessments or conclusions EPA may have made relative to available toxicological information on the agricultural chemical in question.

The department of health and environmental sciences and the department of agriculture shall cooperatively ensure appropriate and timely notice to affected parties, including the registrant of an agricultural chemical, concerning the adoption of standards and interim numerical standards.

The department of agriculture is responsible for the development of agricultural chemical ground water management plans. The department shall adopt appropriate rules to ensure compliance with the requirements of [section 12], including procedures for the development of the plans, communication with sources of information needed for the plans, communication with citizens who may be affected by the plans, and criteria for ensuring that the content of the plans meets the objectives of preventing ground water impairment, minimizing the presence of agricultural chemicals in ground water, and protecting present and future beneficial uses of ground water as specified in [section 12]. The department of agriculture shall also adopt rules specifying procedures for obtaining comments on agricultural chemical ground water management plans from the department of health and environmental sciences, for adoption of completed plans, and for making modifications to adopted plans.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1 through 24] may be cited as the "Montana Agricultural Chemical Ground Water Protection Act".

NEW SECTION. Section 2. Definitions. Unless the context requires otherwise, in [sections 1 through 24] the following definitions apply:

(1) "Agricultural chemical" means any of the following:

(a) a pesticide as defined in 80-8-102;

(b) an isomer, degradation, or metabolic product of a pesticide; or

(c) a commercial fertilizer as defined in 80-10-101.

(2) "Best management plans" and "best management practices" mean activities, procedures, and practices established by the department of agriculture, in consultation with the Montana state university extension service, to prevent or remedy the introduction of agricultural chemicals into ground water to the extent technically and economically practical.

(3) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(4) "Confirmatory procedure" means a process for verifying the detection of agricultural chemicals in water, soil, and other related media.

(5) "EPA" means the United States environmental

protection agency.

(6) "Ground water" means any water of the state occupying the voids within a geologic formation and within the zone of saturation capable of yielding sufficient quantities of water to a well for beneficial use.

(7) "Ground water impairment" means the alteration of the physical, chemical, or biological properties of ground water by an agricultural chemical, whether from discharge, use, or introduction, that prevents or is likely to prevent the present or future beneficial use of the ground water as expressed by the ground water's classification.

(8) "Interim numerical standard" means a health-based number that expresses the concentration of an agricultural chemical allowed in ground water and that is adopted by a rule of the board pursuant to [section 9(5) or (6)].

(9) "Margin of safety" means numerical margins that are applied to the no observable effect level in an agricultural chemical toxicology study and that are used by the EPA to extrapolate data obtained from studies of animals to humans, including sensitive individuals.

(10) "No observable effect level" means the highest dose level of an agricultural chemical to which a laboratory animal is exposed, per unit of body weight, at which no effect is observed, as established by EPA's pesticide registration process.

1 (11) "Nonpoint source" means a diffuse source of
2 agricultural chemicals resulting from activities of man over
3 a relatively large area, the effects of which must normally
4 be addressed or controlled by a management or conservation
5 practice.

6 (12) "Nonpromulgated federal standard" means a health
7 advisory, suggested no observable effect level, suggested
8 maximum contaminant level, or suggested ground water residue
9 guidance level that is published but not promulgated by
10 regulation by EPA and that is a suggested measure of the
11 health risk represented by the concentration of an
12 agricultural chemical in water.

13 (13) "Numerical risk assessment" means a scientific
14 procedure used to measure the statistical probability of
15 human health risk associated with exposure to an
16 agricultural chemical.

17 (14) "Oncogenic potential" means the potential of an
18 agricultural chemical to cause tumors in laboratory animals
19 and the extrapolation of that potential to humans through
20 use of statistical models and other evidence.

21 (15) "Person" means any individual, group, firm,
22 cooperative, corporation, association, partnership,
23 political subdivision, state or federal government agency,
24 or other organization or entity.

25 (16) "Point of standards application" means the

1 specific location in an aquifer where ground water quality
2 and quantity are sampled, measured, evaluated, or otherwise
3 used by either the department or the department of health
4 and environmental sciences to implement the provisions of
5 [sections 1 through 24].

6 (17) "Point source" means a point source as defined in
7 75-5-103, including but not limited to chemical mixing,
8 loading, and storage sites and sites of agricultural
9 chemical spills.

10 (18) "Promulgated federal standard" means an
11 agricultural chemical maximum contaminant level as
12 established under the federal Safe Drinking Water Act, a
13 national primary drinking water standard, or an interim
14 drinking water regulation or other EPA regulation based on
15 federal law.

16 (19) "Registrant" means a person as defined in 80-8-102
17 and 80-10-101.

18 (20) "Standard" means the numerical value expressing
19 the concentration of an agricultural chemical in ground
20 water that presents a human health risk over a lifetime of
21 consumption and that is adopted by a rule of the board as
22 required by [section 9].

23 (21) "Use" means any act of handling or release of an
24 agricultural chemical or exposure of man or the environment
25 to an agricultural chemical, including but not limited to

1 application, mixing, loading, storage, disposal, or
2 transportation.

3 NEW SECTION. **Section 3. Policy.** It is the public
4 policy of this state to:

5 (1) protect ground water and the environment from
6 impairment or degradation due to the use of agricultural
7 chemicals;

8 (2) allow for the proper and correct use of
9 agricultural chemicals that are valuable and necessary for
10 agricultural production and disease control;

11 (3) provide for the management of agricultural
12 chemicals to prevent, minimize, and mitigate their presence
13 in ground water, considering the use of the ground water,
14 and to provide special protection to high priority and
15 highly susceptible ground water; and

16 (4) provide for education and training of agricultural
17 chemical applicators and the general public on ground water
18 protection and agricultural chemical use.

19 NEW SECTION. **Section 4. Administration.** (1) The
20 department and the department of health and environmental
21 sciences shall administer [sections 1 through 24].

22 (2) The department of health and environmental
23 sciences is responsible for the establishment and
24 enforcement of agricultural chemical ground water standards
25 and interim numerical standards as authorized by [section

1 9], ground water monitoring as authorized by [sections 10
2 and 11], providing comments to the department during the
3 development of agricultural chemical ground water management
4 plans, conducting research as set forth in [section 7], and
5 related responsibilities set forth in Title 75, chapter 5.

6 (3) The department is responsible for the preparation,
7 implementation, and enforcement of agricultural chemical
8 ground water management plans as authorized by [sections 12
9 and 16 through 24], public education as authorized by
10 [section 6], ground water monitoring as authorized by
11 [sections 10 and 11], other duties related to promoting
12 research as set forth in [section 7], and related
13 responsibilities set forth in Title 80, chapters 8 and 10.

14 (4) [Sections 1 through 24] do not limit the
15 department's responsibility to enforce agricultural chemical
16 label directions and prohibitions.

17 (5) The administration of [sections 1 through 24],
18 including rulemaking and hearing functions authorized by
19 [sections 1 through 24], must be conducted in accordance
20 with the Montana Administrative Procedure Act, Title 2,
21 chapter 4.

22 NEW SECTION. **Section 5. Rulemaking.** (1) The board
23 shall adopt rules for the administration of [sections 1
24 through 24] for which the board and the department of health
25 and environmental sciences have responsibility. These rules

1 must include but are not limited to:

2 (a) standards and interim numerical standards for
3 agricultural chemicals in ground water as authorized by
4 [section 9];

5 (b) procedures for ground water monitoring as
6 authorized by [sections 10 and 11];

7 (c) field and laboratory operational quality
8 assurance, quality control, and confirmatory procedures as
9 authorized by [sections 7, 10, and 11], which may include,
10 through adoption by reference, procedures that have been
11 established or approved by EPA for quality assurance and
12 quality control;

13 (d) standards for maintaining the confidentiality of
14 data and information declared confidential by EPA and the
15 confidentiality of chemical registrant data and information
16 protected from disclosure by federal or state law as
17 required by [section 8]; and

18 (e) administrative civil penalties as authorized by
19 [section 22].

20 (2) The department shall adopt rules necessary to
21 carry out its responsibilities under [sections 1 through
22 24]. These rules must include but are not limited to:

23 (a) procedures for ground water monitoring as
24 authorized by [sections 10 and 11];

25 (b) the content and procedures for development of

1 agricultural chemical ground water management plans,
2 including the content of best management practices and best
3 management plans, procedures for obtaining comments from the
4 department of health and environmental sciences on the
5 plans, and the adoption of completed plans and plan
6 modifications as authorized by [section 12];

7 (c) standards for maintaining the confidentiality of
8 data and information declared confidential by EPA and of
9 chemical registrant data and information protected from
10 disclosure by federal or state law as required by [section
11 8];

12 (d) field and laboratory operational quality
13 assurance, quality control, and confirmatory procedures as
14 authorized by [sections 7, 10, and 11], which may include,
15 through adoption by reference, procedures that have been
16 established or approved by EPA for quality assurance and
17 quality control;

18 (e) emergency procedures as authorized by [section
19 20];

20 (f) procedures for issuance of compliance orders as
21 authorized by [section 18]; and

22 (g) procedures for the assessment of administrative
23 civil penalties as authorized by [section 22].

24 NEW SECTION. Section 6. Educational programs. (1) The
25 department, in cooperation with the Montana state university

extension service, shall develop and conduct appropriate educational programs to promote the policy specified in [section 3]. The department and the Montana state university extension service may charge a fee for the educational programs commensurate with the costs of program development and administration.

(2) All fees collected by the department pursuant to this section must be deposited in the state special revenue fund. The department may spend the funds for the purposes set forth in this section.

(3) All fees collected by the Montana state university extension service must be deposited in a special account identified for this purpose. The extension service may spend the funds for the purposes set forth in this section.

NEW SECTION. Section 7. Research. The department or the department of health and environmental sciences may promote, for the purposes described in [section 3], cooperative ground water research programs with units of the university system and associated agricultural experiment stations, the bureau of mines and geology, and other appropriate agencies, organizations, and individuals.

NEW SECTION. Section 8. Confidentiality. (1) The department and the department of health and environmental sciences shall maintain the confidentiality of data declared confidential by EPA and chemical registrant data and

information protected from disclosure by federal or state law.

(2) The department of health and environmental sciences shall comply with the requirements of 75-5-105 and the department shall comply with the requirements of 80-8-107 and 80-10-210, except as otherwise provided by this section.

NEW SECTION. Section 9. Ground water standards. (1) The board shall adopt standards and, as applicable, interim numerical standards for agricultural chemicals in ground water. The standards must be the same as any promulgated or nonpromulgated federal standard established by EPA, although the board may determine, pursuant to the requirements of subsection (7), that an interim numerical standard different from either a promulgated or nonpromulgated federal standard is justified. Except as provided in subsection (7), if more than one nonpromulgated federal standard exists for an agricultural chemical, the board must adopt the most recently established nonpromulgated federal standard.

(2) The board is not required to adopt a standard or interim numerical standard for every agricultural chemical registered in the state. The only standards and interim numerical standards required are for those agricultural chemicals:

(a) that are addressed by promulgated and

1 nonpromulgated federal standards;

2 (b) the presence of which has been verified in ground
3 water as provided in [section 10]; or

4 (c) that the department and the department of health
5 and environmental sciences predict may appear in ground
6 water, in accordance with the procedures and determinations
7 specified in [sections 10 and 11].

8 (3) Before either the department or the department of
9 health and environmental sciences provides monitoring
10 results or before either may order a person to conduct
11 monitoring and prior to the department taking an enforcement
12 action under [sections 1 through 24] or the department of
13 health and environmental sciences taking an enforcement
14 action under Title 75, chapter 5, the board must have
15 established a standard or interim numerical standard for the
16 agricultural chemical in question, except in emergency
17 situations as specified in [section 20] and 75-5-621, as
18 applicable.

19 (4) The department may not develop and implement an
20 agricultural chemical ground water management plan for a
21 particular agricultural chemical in accordance with [section
22 12] until a standard or interim numerical standard for that
23 chemical has been established by the board or until EPA
24 requires the development of an agricultural chemical ground
25 water management plan.

1 (5) If no promulgated federal standard has been
2 adopted and no nonpromulgated federal standard has been
3 published for an agricultural chemical for which the board
4 is required to establish a standard or interim numerical
5 standard as specified in subsections (2)(b) and (2)(c), the
6 department of health and environmental sciences shall
7 request EPA to establish a promulgated or nonpromulgated
8 federal standard. If the department of health and
9 environmental sciences determines that EPA cannot comply
10 with the request within 60 days, the board shall adopt an
11 interim numerical standard, provided that the board shall
12 review the interim numerical standard whenever EPA adopts a
13 promulgated federal standard or publishes a nonpromulgated
14 federal standard for the agricultural chemical in question.

15 (6) The board may adopt an interim numerical standard
16 that is different from either a promulgated or
17 nonpromulgated federal standard, if there is significant new
18 and relevant technical information available that is
19 scientifically valid and that has not been considered by
20 EPA. The board shall review the interim numerical standard
21 when EPA revises the promulgated or nonpromulgated federal
22 standard for the agricultural chemical in question.

23 (7) In addition to criteria the board considers
24 pursuant to rules adopted under [section 5] for the adoption
25 of standards, the board shall base any interim numerical

standard it adopts under either subsection (5) or (6) on:

(a) a person weighing 70 kilograms and drinking 2 liters of water per day over a lifetime; and

(b) EPA's conclusions regarding the no observable effect level, including the margin of safety identified by EPA when scientific data indicates oncogenic potential for the agricultural chemical and EPA has determined that a numerical risk assessment is not justified, is inappropriate, or does not serve as the primary toxicological basis for regulation.

(8) Nothing in this section may interfere with the board's responsibility to adopt rules and standards under Title 75, chapter 6.

NEW SECTION. Section 10. Monitoring programs. (1) The department or the department of health and environmental sciences may conduct monitoring programs to determine:

(a) whether residues of agricultural chemicals are present in ground water; and

(b) the likelihood of an agricultural chemical entering ground water, if either department determines that sufficient valid scientific data is available to reasonably predict the behavior of a particular agricultural chemical in the soil and ground water.

(2) The department and the department of health and environmental sciences shall evaluate all information

relating to this section that is received from any person based upon standard procedures, protocols, and confirmatory procedures established by rules. Information found to be insufficient based on the adopted procedures and protocols, including analytical results, may be used only for informational purposes.

NEW SECTION. Section 11. Evaluation and use of monitoring results. (1) When providing preliminary monitoring results to ground water users or confirmed monitoring results to the users or the public, the departments shall also provide the applicable standard or interim numerical standard.

(2) When monitoring results reveal the presence of an agricultural chemical in ground water:

(a) the department of health and environmental sciences is the lead department for determining health risks; and

(b) the department is the lead department for determining compliance with agricultural chemical ground water management plans authorized by [section 12] and with agricultural chemical registration, use, and labeling requirements and conditions pursuant to Title 80, chapters 8 and 10.

(3) The department and the department of health and environmental sciences shall cooperatively evaluate the

1 results of monitoring programs authorized by [section 10] to
2 determine, as applicable:

3 (a) whether the presence of an agricultural chemical
4 in ground water meets or exceeds:

5 (i) an established standard or interim numerical
6 standard at a point of standards application; or

7 (ii) any requirements associated with the
8 classification of the ground water;

9 (b) whether the conditions required by a specific
10 agricultural chemical ground water management plan as set
11 forth in [section 12] are appropriate or have been violated;

12 (c) the geographical or hydrogeological extent of the
13 agricultural chemical in the ground water; and

14 (d) whether there is a definite trend of increased
15 presence of the agricultural chemical in ground water based
16 on the percentage of change in concentrations measured at a
17 single monitoring site or at different monitoring sites over
18 a reasonable period of time.

19 (4) Based on the results of monitoring, the department
20 and the department of health and environmental sciences
21 shall implement appropriate actions specified in [sections 1
22 through 24] to mitigate any existing impacts of an
23 agricultural chemical found in ground water and to prevent
24 future impacts of an agricultural chemical that may be found
25 in ground water, in relation to human health, agriculture,

1 and the environment.

2 (5) The department may not undertake compliance and
3 enforcement actions authorized by [sections 1 through 24]
4 and the department of health and environmental sciences may
5 not undertake compliance and enforcement actions authorized
6 by Title 75, chapter 5, unless there is sufficient evidence
7 collected through:

8 (a) monitoring at a point of standards application or
9 through other investigations that reveal that a person using
10 an agricultural chemical or introducing or discharging the
11 chemical into ground water has violated a provision of
12 [section 17] or Title 75, chapter 5; or

13 (b) monitoring that reveals a significant probability
14 for an agricultural chemical to enter ground water.

15 (6) Any actions taken by the departments in accordance
16 with subsections (4) and (5) must be consistent with the
17 priority accorded to and the beneficial use of the ground
18 water as expressed by its classification. The type and
19 complexity of the departments' actions may be more
20 comprehensive in situations involving higher ground water
21 classifications. Actions involving the lowest ground water
22 classification may be limited to minimizing further impact
23 unless the departments jointly determine that the lowest
24 classified ground water will impair or is likely to impair
25 other state waters that have a higher classification.

NEW SECTION. Section 12. Agricultural chemical ground water management plans. (1) The department may develop and implement a general state agricultural chemical ground water management plan. This plan may include general program elements set forth in [sections 1 through 24] and best management plans and best management practices.

(2) Except as provided in subsection (10), the department shall develop and implement agricultural chemical ground water management plans specific to particular agricultural chemicals and to a defined geographical area. Within available resources, the department shall prioritize preparation of specific agricultural chemical ground water management plans based on the following criteria:

(a) when the level of an agricultural chemical found in ground water is at 50% of the standard or interim numerical standard at a point of standards application and is scientifically validated;

(b) when a definite trend of increased presence of the agricultural chemical in ground water at a point of standards application is scientifically validated;

(c) when EPA proposes to suspend or cancel registration of an agricultural chemical, prohibits or restricts the chemical's sale or use in the state, or otherwise initiates action against a chemical because of ground water concerns and when EPA's action, restriction, or

prohibition will be implemented unless the state develops an adequate management plan; or

(d) when agricultural chemicals that possess or are suspected of possessing properties that indicate potential to migrate to ground water are being applied on areas underlaid by ground water that is vulnerable to impairment.

(3) The department may identify and designate persons using an agricultural chemical that is addressed by a specific agricultural chemical ground water management plan in the geographical area that is addressed by the plan. Designated persons shall comply with the plan.

(4) In developing general and specific agricultural chemical ground water management plans, the department shall consider the current and potential beneficial use of the ground water included in or affected by the plans as expressed by the classification of the ground water. If the ground water has not been classified, the department shall consider it to be included in the classification representing the highest quality of ground water until such time as the ground water is classified by the board, and the department may proceed to develop an agricultural chemical ground water management plan as required by subsection (2).

(5) The department may request the board to classify certain ground water and may collect the data and information required by the board to classify the ground

1 water. If adequate technical data and financial resources
2 are available as determined by the board, the board shall
3 classify ground water at locations as requested by the
4 department.

5 (6) A specific agricultural chemical ground water
6 management plan must include:

7 (a) requirements to prevent ground water impairment
8 that are based on ground water use, value, and vulnerability
9 and that address all applicable aspects of agricultural
10 chemical use; and

11 (b) requirements to prevent or minimize further
12 presence of the agricultural chemical in the ground water
13 and to provide protection for the present and future
14 beneficial use of the ground water.

15 (7) A specific agricultural chemical ground water
16 management plan may include but is not limited to the
17 following elements:

18 (a) identification of geographical areas where an
19 agricultural chemical may be used;

20 (b) ground water, soil, meteorological, and geological
21 characteristics;

22 (c) best management plans and best management
23 practices;

24 (d) identification of high priority ground water;

25 (e) certification, licensing, training, and education

1 requirements for persons using agricultural chemicals;

2 (f) identification of setback areas around water wells
3 where certain activities may be restricted;

4 (g) agricultural chemical application rates and timing
5 and related use criteria;

6 (h) alternative pest management techniques, including
7 integrated pest management;

8 (i) other requirements for pesticides, as set forth in
9 Title 80, chapter 8, and related rules and for fertilizers,
10 as set forth in Title 80, chapter 10, and related rules; and

11 (j) EPA requirements.

12 (8) When developing and implementing a specific
13 agricultural chemical ground water management plan, the
14 department shall consider the beneficial uses of the
15 agricultural chemical and shall consult with the Montana
16 state university extension service.

17 (9) Within available resources, the department shall
18 contact users of an agricultural chemical and user groups
19 that will be subject to a general or specific agricultural
20 chemical ground water management plan to request their
21 recommendations concerning the development of the plan.

22 (10) The department is not required to develop or
23 implement a commercial fertilizer ground water management
24 plan until EPA implements a program to protect ground water
25 from fertilizers. Prior to the department implementing an

agricultural chemical ground water management plan for a commercial fertilizer, the department and the department of health and environmental sciences shall determine the source of the nitrate or other component of fertilizer present in ground water. If the source is not from the use of a commercial fertilizer, the department may not implement this section.

(11) The department shall adopt specific agricultural chemical ground water management plans through rulemaking, provided that the department may implement emergency plans as set forth in 80-8-105(4) or as authorized by the Montana Administrative Procedure Act. Prior to rulemaking, the department shall provide to the department of health and environmental sciences a copy of each proposed specific agricultural chemical ground water management plan. A 30-day period must be provided for the department of health and environmental sciences to prepare comments on the plan.

(12) The department shall review agricultural chemical ground water management plans periodically to determine if the requirements contained in the plans need to be modified based on new scientific data and information. Plan modifications must be accomplished by rulemaking.

NEW SECTION. Section 13. Department of health and environmental sciences to amend rules. The department of health and environmental sciences shall amend Rules

16.20.603, 16.20.1011, and 16.20.1012, Administrative Rules of Montana, to define reasonable land, soil, and water conservation practices to include point and nonpoint source agricultural operations involving the use of agricultural chemicals that are conducted in compliance with specific agricultural chemical ground water management plans prepared pursuant to [section 12] and to exclude those agricultural operations from Montana ground water pollution control system permit requirements.

NEW SECTION. Section 14. Agricultural chemical ground water protection accounts -- acceptance and expenditure of gifts, grants, and funds. (1) There is a department of agriculture agricultural chemical ground water protection special revenue account and a department of health and environmental sciences agricultural chemical ground water protection special revenue account within the state special revenue fund established by 17-2-102.

(2) Both accounts named in subsection (1) may receive funds from any source as gifts, grants, cost-share funds, or other funds designated for agricultural chemical ground water protection purposes.

(3) The department and the department of health and environmental sciences may individually or jointly spend funds received by their respective accounts for the purposes authorized by [sections 1 through 24].

1 NEW SECTION. Section 15. Special funding. (1) A fee
2 of \$15 is assessed for the registration of pesticides in
3 addition to the fee imposed by 80-8-201(4).

4 (2) A fee of \$10 is assessed for the registration of
5 fertilizers in addition to the fee imposed by 80-10-201(1).
6 The additional fee must be used for the ground water
7 protection responsibilities of the department relating to
8 fertilizers. Revenues collected from this fee must be
9 credited to the commercial fertilizer account within the
10 state special revenue fund for the administration of
11 [sections 1 through 24].

12 NEW SECTION. Section 16. Authority to investigate and
13 inspect. Authorized representatives of the department,
14 consistent with the responsibilities set forth in [sections
15 1 through 24] and upon presentation of department-issued
16 credentials, may at reasonable times or under emergency
17 conditions enter upon any public or private property to:

18 (1) investigate conditions relating to compliance with
19 agricultural chemical labels, agricultural chemical ground
20 water management plans, monitoring requirements, or ground
21 water protection requirements and to investigate violations
22 of plans or compliance orders;

23 (2) gain access to and copy any records required by
24 the department in the administration of [sections 1 through
25 24];

1 (3) establish and inspect monitoring equipment; and

2 (4) sample ground water, including drinking water
3 supply sources such as wells and similar structures.

4 NEW SECTION. Section 17. Prohibited activity. It is
5 unlawful for a person to:

6 (1) cause ground water impairment or to place or cause
7 to be placed any agricultural chemical where it is likely to
8 cause ground water impairment, except when the use of an
9 agricultural chemical was:

10 (a) in accordance with label directions, including
11 precautions listed with those directions; or

12 (b) in compliance with a specific agricultural
13 chemical ground water management plan;

14 (2) violate any provision of a specific agricultural
15 chemical ground water management plan;

16 (3) violate any lawful order issued pursuant to
17 [sections 1 through 24]; or

18 (4) violate any provision of [sections 1 through 24].

19 NEW SECTION. Section 18. Compliance orders. (1) In
20 furtherance of [section 17], the department may issue a
21 compliance order to any person violating a standard, an
22 interim numerical standard, or any other requirement
23 established pursuant to [sections 1 through 24]. The
24 department shall coordinate its proposed actions pursuant to
25 this section with proposed actions of the department of

1 health and environmental sciences pursuant to 75-5-613, if
2 any. Issuance of a compliance order under [sections 1
3 through 24] precludes the department from taking other
4 enforcement actions for the same violation under Title 80,
5 chapter 8 or 10.

6 (2) The department may issue a compliance order to any
7 person, including the person's employees, agents, and
8 subcontractors, whether or not the person is subject to a
9 specific management plan, to require the cleanup of any
10 agricultural chemical that the person has accidentally or
11 purposely dumped, spilled, or misused or unlawfully used
12 that has a significant probability of entering ground water.

13 (3) When issuing a compliance order, the department
14 may require a person who has violated a provision of
15 [section 17] to conduct monitoring to assist in determining
16 the presence or level of concentration of an agricultural
17 chemical in ground water and the effectiveness of cleanup
18 efforts. The department shall specify criteria in the
19 compliance order for determining the duration of monitoring.

20 (4) A compliance order must specify the requirement
21 violated and must set a time for compliance. In establishing
22 a time for compliance, the department shall take into
23 account the seriousness of the violation and any good-faith
24 efforts that the person has made to comply with the
25 requirement that has been violated. A compliance order

1 issued under this section must be served either personally
2 by a person qualified to perform service under the Montana
3 Rules of Civil Procedure or by certified mail.

4 (5) A person may provide information to the
5 department, including data concerning the person's economic
6 situation. The department shall consider this information in
7 determining the amount of the person's financial obligation
8 for cleanup under this section.

9 NEW SECTION. **Section 19.** Injunctions authorized. The
10 department may commence a civil action seeking appropriate
11 relief, including a permanent or temporary injunction,
12 pursuant to 80-8-306 or 80-10-303, as applicable, for a
13 violation that is subject to a compliance order under
14 [section 18].

15 NEW SECTION. **Section 20.** Emergencies. Notwithstanding
16 any other provisions of [sections 1 through 24], if the
17 department finds that an emergency exists that requires
18 immediate action to protect ground water from agricultural
19 chemicals or to prevent use of ground water impaired or
20 likely to be impaired by agricultural chemicals, the
21 department may, without notice or hearing, issue necessary
22 orders or adopt rules to protect public health, welfare, and
23 safety. The duration of an emergency order or rule is
24 limited to the emergency provisions of the Montana
25 Administrative Procedure Act as specified in 2-4-303.

NEW SECTION. Section 21. Violators subject to penalties. (1) A person found to be in violation of [sections 1 through 24] or a rule established pursuant to [sections 1 through 24] is subject to the penalty provisions of [sections 22 through 24].

(2) For the purpose of this section, the term "person" means, in addition to the definition in [section 2], any responsible corporate officer.

(3) Nothing in [sections 1 through 24] may be construed as requiring the department or an authorized agent of the department to report minor violations of [sections 1 through 24] for prosecution when the department or a duly authorized agent believes that the public interest will be best served by other remedial action, by a suitable notice of warning in writing, or by a lawful written order.

(4) Action under [sections 22 through 24] does not bar the department from enforcement of [sections 1 through 24] or of rules or orders issued under [sections 1 through 24] by injunction or other appropriate remedy.

(5) The department and the department of health and environmental sciences may not both subject a violator to the penalties authorized by [sections 22 through 24] and penalties authorized by Title 75, chapter 5, for the same violation.

NEW SECTION. Section 22. Administrative civil

penalty. (1) A person who commits a violation of [sections 1 through 24] may be assessed an administrative civil penalty by either the department or the department of health and environmental sciences, consistent with their respective responsibilities, of not more than \$1,000 for each offense. Farm applicators possessing a pesticide permit or using a fertilizer may not be assessed an administrative civil penalty of more than \$500 for the first offense. Assessment of a civil penalty may be made in conjunction with any other warning, order, or administrative action authorized by [sections 1 through 24] or Title 75, chapter 5, that is issued or undertaken by either the department or the department of health and environmental sciences.

(2) No administrative civil penalty may be assessed unless the person charged is given notice and opportunity for a hearing pursuant to Title 2, chapter 4, part 6, of the Montana Administrative Procedure Act.

(3) In determining an appropriate administrative civil penalty, the responsible department shall consider the effect on the person's ability to continue in business, the gravity of the violation that occurred, the degree of care exercised by the offender, and whether significant harm resulted to public health, agricultural crops, livestock, or the environment.

(4) If the responsible department is unable to collect

the administrative civil penalty or if a person fails to pay all or a set portion of the administrative civil penalty as determined by the responsible department, the department may seek to recover the amount in the appropriate district court.

(5) A person against whom the department or the department of health and environmental sciences has assessed an administrative civil penalty may, within 30 days of the final agency action making the assessment, appeal the assessment to the district court of the county in which the violation is alleged to have occurred. A jury trial must be granted when demanded under Rule 38 of the Montana Rules of Civil Procedure.

NEW SECTION. Section 23. Judicial civil penalty. A person who commits a violation as specified in [section 17] shall be subject to a judicial civil penalty not to exceed \$10,000. Each occurrence constitutes a separate violation.

NEW SECTION. Section 24. Criminal penalties. (1) A person who intentionally commits a violation as specified in [section 17] is guilty of an offense and subject to a fine not to exceed \$25,000 for each day the violation continues or imprisonment for not more than 1 year, or both. Following an initial conviction under this section, a subsequent conviction subjects a person to a fine of not more than \$50,000 for each day the violation continues or imprisonment

for not more than 2 years, or both.

(2) Except as otherwise provided in [sections 1 through 24], a person convicted of violating any of the provisions of [sections 1 through 24] or rules issued under [sections 1 through 24] or who misrepresents, impedes, obstructs, hinders, or otherwise prevents or attempts to prevent the department from performance of its duties in connection with the provisions of [sections 1 through 24] is guilty of a misdemeanor and shall be fined not less than \$100 but not more than \$1,500.

(3) A person who knowingly makes any false statement, representation, or certification in any record, report, or other document filed or required to be maintained under [sections 1 through 24] or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under [sections 1 through 24] shall, upon conviction, be punished by a fine of not more than \$5,000 or by imprisonment for not more than 6 months, or both.

(4) A person who with intent to defraud uses or reveals confidential information and data provided under [sections 1 through 24] or rules issued under [sections 1 through 24] shall, upon conviction, be fined not more than \$5,000 or imprisoned for not more than 1 year, or both.

Section 25. Section 75-5-105, MCA, is amended to read:

1 **"75-5-105. Confidentiality of records. Any Except as**
 2 **provided in [section 8], any** information concerning sources
 3 of pollution which is furnished to the board or department
 4 or which is obtained by either of them is a matter of public
 5 record and open to public use. However, any information
 6 unique to the owner or operator of a source of pollution
 7 which would, if disclosed, reveal methods or processes
 8 entitled to protection as trade secrets shall be maintained
 9 as confidential if so determined by a court of competent
 10 jurisdiction. The owner or operator shall file a
 11 declaratory judgment action to establish the existence of a
 12 trade secret if he wishes such information to enjoy
 13 confidential status. The department shall be served in any
 14 such action and may intervene as a party therein. Any
 15 information not intended to be public when submitted to the
 16 board or department shall be submitted in writing and
 17 clearly marked as confidential. The data describing physical
 18 and chemical characteristics of a waste discharged to state
 19 waters shall not be considered confidential. The board may
 20 use any information in compiling or publishing analyses or
 21 summaries relating to water pollution if such analyses or
 22 summaries do not identify any owner or operator of a source
 23 of pollution or reveal any information which is otherwise
 24 made confidential by this section."

25 **Section 26.** Section 75-5-301, MCA, is amended to read:

1 **"75-5-301. Classification and standards for state**
 2 **waters. The Consistent with the provisions of [section 9],**
 3 **the board shall:**

4 (1) establish and modify the classification of all
 5 waters in accordance with their present and future most
 6 beneficial uses;

7 (2) formulate standards of water purity and
 8 classification of water according to its most beneficial
 9 uses, giving consideration to the economics of waste
 10 treatment and prevention;

11 (3) review, from time to time at intervals of not more
 12 than 3 years, established classifications of waters and
 13 standards of water purity and classification."

14 **Section 27.** Section 80-8-105, MCA, is amended to read:

15 **"80-8-105. Rules.** (1) The department may adopt by
 16 reference without a public hearing regulations adopted under
 17 the Federal Insecticide, Fungicide, and Rodenticide Act, as
 18 amended. The department may, after a public hearing, adopt
 19 all rules necessary to carry out this chapter.

20 (2) The rules may prescribe methods of:

21 (a) registration, suspension or cancellation of
 22 registration, application, use or restricting use,
 23 prohibiting use, offering or exposing for sale of any
 24 pesticide;

25 (b) determining whether pesticides are highly toxic to

1 man;

2 (c) determining standards of coloring or discoloring

3 for pesticides and subjecting pesticides to the requirements

4 of 80-8-202;

5 (d) licensing commercial applicators, operators, and

6 dealers, establishing methods of recordkeeping for

7 applicators, operators, and dealers, and providing for the

8 review of the records by the department's authorized agent

9 and the submission of the records to the department upon

10 written request;

11 (e) issuing farm applicator special-use permits and

12 the maintenance and submission of records by farm

13 applicators issued special-use permits;

14 (f) collection, examination, and standard deviation

15 from guarantee analysis and umpire analysis of pesticides

16 and devices;

17 (g) operating and maintaining equipment used by

18 applicators;

19 (h) developing examinations which shall be held

20 periodically throughout the state;

21 (i) establishing the form and content of all

22 applications for licenses and permits;

23 (j) designating pesticides that may be sold at retail

24 for home, yard, garden, and lawn use. The department may

25 also limit retail sale of pesticides, up to a specific

1 number of pounds or gallons and concentration which would be

2 sublethal to humans and animals if small amounts of it were

3 accidentally swallowed, inhaled, sprayed, or dusted on the

4 skin.

5 (k) revoking licenses and permits;

6 (l) registering or controlling any spray adjuvant,

7 such as a wetting agent, spreading agent, deposit builder,

8 adhesive, emulsifying agent, deflocculating agent, water

9 modifier, or similar agent with or without toxic properties

10 of its own intended to be used with any other pesticide as

11 an aid to the application or effect of that other pesticide,

12 whether or not distributed in a package or container

13 separate from that of a pesticide with which it is to be

14 used;

15 (m) registering pesticide-fertilizer and other

16 chemical blends or, instead of registration, establishing

17 licensing, inspection, and fees for blending plants;

18 (n) establishing registration procedures for devices,

19 with a fee not to exceed \$5 per type of device, specifying

20 classes of devices to be registered and providing for

21 additional requirements;

22 (o) imposing conditions for renewal of dealer,

23 applicator, and operator licenses and permits, including

24 requalification training;

25 (p) establishing procedures for implementing and

administering the civil penalties under 80-8-306; and

(q) establishing fees for training courses and materials.

(3) (a) Whenever Consistent with the provisions of [sections 1 through 24], whenever the department finds that those rules are necessary to carry out the purposes and intent of this chapter, the rules may relate to the time, place, manner, and method of registration, suspension or cancellation of registration, application, or selling of the pesticides, may restrict or prohibit use of pesticides in the state or in designated areas during specified periods of time, and shall encompass all reasonable factors which the department considers necessary to prevent damage or injury to:

(i) persons, animals, crops, or pollinating insects from the effect of drift or careless application;

(ii) the environment;

(iii) plants, including forage plants;

(iv) wildlife;

(v) fish and other aquatic life.

(b) In issuing the rules, the department shall give consideration to pertinent research findings and recommendations of other agencies of this state or of the federal government.

(4) If the department finds that an emergency exists

which requires immediate action with regard to the registration, use, or application of pesticides, the department may, without notice or hearing, issue necessary orders or rules to protect the public health, welfare, and safety. An order or rule issued under this subsection is effective for the period prescribed by the Montana Administrative Procedure Act. If the department determines that the emergency order or rule should remain in effect, a public hearing under 80-8-106 shall be held within the above period to determine whether the order or rule should be adopted by the department.

(5) All rules and orders issued by the department shall be in writing, shall be entered in full in books to be kept by the department for that purpose, shall be indexed, and shall be public records open for inspection at all times during reasonable office hours. Except for orders establishing or changing rules of practice and procedure, all orders made and published by the department shall include and be based upon written findings of fact. A copy of any rule or order certified by the department shall be received in evidence in all courts of this state with the same effect as the original."

Section 28. Section 80-8-107, MCA, is amended to read:

"80-8-107. Public information. The Except as provided in [sections 1 through 24], the department as it deems

proper may, alone or in cooperation with other state or federal agencies, publish information regarding aspects of the use and application sections or registration sections of this chapter. This information cannot disclose operations of selling, production, or use of pesticides by any person."

Section 29. Section 80-8-305, MCA, is amended to read:

"80-8-305. General violations. (1) It Consistent with the provisions of [sections 1 through 24], it is unlawful for any person:

(a) to discard any pesticide or pesticide container in such a manner as to cause injury to humans, domestic animals, or wildlife, or to pollute any waterway in a way harmful to any wildlife therein or to the environment;

(b) to handle, transport, store, display, or distribute pesticides or pesticide containers in such a manner as to endanger man or the environment or to endanger food or any other products that may be transported, stored, displayed, or distributed with such pesticides;

(c) to handle, apply, or attempt to apply any registered pesticide for which he does not have an appropriate, complete, or legible label at hand; or

(d) to apply or attempt to apply any registered pesticide in a manner inconsistent with the label, as defined in 80-8-102.

(2) It is unlawful for any person to manufacture,

formulate, or store any registered pesticide or component or byproduct thereof in such a manner that the pesticide or any component or byproduct cannot be contained or confined within the boundaries of the lands owned by or under the appropriate control of the person involved. Odor is specifically exempted from the provisions of this subsection."

NEW SECTION. Section 30. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 31. Codification instruction. [Sections 1 through 24] are intended to be codified as an integral part of Title 80, and the provisions of Title 80 apply to [sections 1 through 24].

NEW SECTION. Section 32. Effective date. [This act] is effective January 1, 1990.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB757, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

HB757 would establish an agricultural chemical groundwater protection program to be administered by the Department of Agriculture and the Department of Health and Environmental Sciences in cooperation with other agencies.

ASSUMPTIONS:

1. There are and will continue to be approximately 4,989 pesticide products registered in the state and the \$15 per product fee assessed in the proposed law would generate \$74,835 per year.
2. There are and will continue to be approximately 1,200 fertilizer products registered in the state and the \$10 per product fee assessed in the proposed law would generate \$12,000 per year. This will remain in the account during the 1991 biennium until EPA implements a program pursuant to proposed law Section 12(10).
3. The primary task in the 1991 biennium will be development of cooperative programs which meet the requirements of EPA, including a general pesticide plan and at least one specific plan.
4. DHES and the Board of Health will adopt by reference EPA approved procedures for groundwater monitoring, field and laboratory operational quality assurance, quality control and confirmatory procedures. Implementation by existing staff is anticipated. The department will receive \$14,967 or 20% of the proposed pesticide fees collected towards the costs for analysis of groundwater samples and for the department's cooperative role in the program.
5. The Dept. of Agriculture and the Montana Agricultural Experiment Station-Cooperative Extension Service (MAES-CES) will cooperatively upgrade the pesticide and fertilizer education programs for applicators and farmers. MAES-CES will utilize existing staff and resources to implement most of the program and receive \$14,967 each year of the proposed pesticide fees collected towards these costs. In addition, there is increased extension service authority for workshop fees in the amount of \$8,000 in FY90 and \$15,000 in FY91.
6. The Dept. of Agriculture and the Montana Bureau of Mines and Geology (MBMG) will cooperatively prioritize collection of necessary data on selected aquifers for submission to DHES for classification of the groundwater. The proposed Dept. of Agriculture expenditures include under operating expenses \$14,967 in FY90 and \$8,000 in FY91 to contract with the MBMG for this purpose and it is further assumed that MBMG will utilize existing staff and resources for any additional costs beyond this revenue generated by the proposed fees.
7. The balance of the anticipated available fee revenue would be utilized by the Dept. of Agriculture for purposes of the bill including the addition of a lab technician grade 10 to be phased in at 0.24 FTE in FY90 (effective 4/1/90) and 1.00 FTE in FY91 and future years, plus operating expenses and start-up equipment in FY90. It is anticipated that there will be approximately 100 more pesticide



DATE 3/10/89

RAY SHACKLEFORD, BUDGET DIRECTOR
OFFICE OF BUDGET AND PROGRAM PLANNING



LEO GLACOMETTO, PRIMARY SPONSOR

DATE 16 Mar 89

Fiscal Note for HB757, as introduced

HB 757

groundwater samples analyzed per year by the Dept. of Agriculture. In addition, there is \$8,000 of authority for workshop expenses and revenues in FY90 and \$15,000 in FY91 included in the Dept. of Agriculture operating expenses.

FISCAL IMPACT:

Expenditures:

Dept. of Agriculture:	Current Law	FY90 Proposed Law	Difference	Current Law	FY91 Proposed Law	Difference
Personal Services	\$ -0-	\$ 5,111	\$ 5,111	\$ -0-	\$ 20,189	\$ 20,189
Operating Expenses	-0-	37,750	37,750	-0-	39,712	39,712
Equipment	-0-	10,040	10,040	-0-	-0-	-0-
DoA Subtotal	\$ -0-	\$ 52,901	\$ 52,901	\$ -0-	\$ 52,901	\$ 52,901
DHES:						
Operating Expenses	\$ -0-	\$ 14,967	\$ 14,967	\$ -0-	\$ 14,967	\$ 14,967
MAES-CES:						
Operating Expenses	\$ -0-	\$ 22,967	\$ 22,967	\$ -0-	\$ 29,967	\$ 29,967
Total Expenditures	\$ -0-	\$ 90,835	\$ 90,835	\$ -0-	\$104,835	\$104,835

Funding:

State Special Revenue

GW Pesticide Registration	\$ -0-	\$ 74,835	\$ 74,835	\$ -0-	\$ 74,835	\$ 74,835
Workshop Fees	-0-	16,000	16,000	-0-	30,000	30,000
Total Funding	\$ -0-	\$ 90,835	\$ 90,835	\$ -0-	\$104,835	\$104,835

Revenues:

State Special Revenue

GW Pesti. Registration	\$ -0-	\$ 74,835	\$ 74,835	\$ -0-	\$ 74,835	\$ 74,835
GW Fertilizer Registr.	-0-	12,000	12,000	-0-	12,000	12,000
Workshop Fees	-0-	16,000	16,000	-0-	30,000	30,000
Total Revenues	\$ -0-	\$102,835	\$102,835	\$ -0-	\$116,835	\$116,835

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

In the event groundwater contamination due to agricultural chemicals is found, management plans requiring higher levels of funding may be required in future years.

HB 757

APPROVED BY COMM. ON
NATURAL RESOURCES

HOUSE BILL NO. 757

INTRODUCED BY GIACOMETTO, WEEDING, BECK, O'KEEFE,
MARKS, HARPER, DEMARS, THOFT

A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH AN
AGRICULTURAL CHEMICAL GROUND WATER PROTECTION PROGRAM TO BE
ADMINISTERED BY THE DEPARTMENT OF AGRICULTURE AND THE
DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES; TO REQUIRE
ESTABLISHMENT OF AGRICULTURAL CHEMICAL GROUND WATER QUALITY
STANDARDS; TO PROVIDE FOR GROUND WATER MONITORING AND
AGRICULTURAL CHEMICAL GROUND WATER MANAGEMENT PLANS; TO
PROVIDE FOR ENFORCEMENT AUTHORITY, COMPLIANCE ORDERS, AND
PENALTIES; TO DIRECT THE DEPARTMENT OF HEALTH AND
ENVIRONMENTAL SCIENCES TO AMEND CERTAIN RULES IMPLEMENTING
THE WATER QUALITY ACT; TO ESTABLISH ADDITIONAL FEES FOR
REGISTRATION OF PESTICIDES AND FERTILIZERS; TO CREATE
AGRICULTURAL CHEMICAL GROUND WATER PROTECTION ACCOUNTS;
AMENDING SECTIONS 75-5-105, 75-5-301, 80-8-105, 80-8-107,
AND 80-8-305, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill in
order to provide guidance to the department of agriculture
and the department of health and environmental sciences
concerning the administration of the provisions of the bill

and the adoption of rules.

Because the departments share responsibility for
certain duties established by the bill, the departments
shall coordinate their rulemaking efforts and whenever
possible adopt identical rules for the areas of shared
responsibility, including:

(1) ground water monitoring as authorized by [sections
10 and 11];

(2) field and laboratory operational quality
assurance, quality control, and confirmatory procedures as
authorized by [sections 7, 10, and 11];

(3) maintenance of confidentiality of certain data as
required by [section 8]; and

(4) administrative civil penalties as authorized by
[section 22].

~~In adopting rules pertaining to quality assurance,~~
~~quality control, and confirmatory procedures, the~~
~~departments shall include the following:~~

~~(1) confirmation of analytical results by two~~
~~different analytical methodologies if two methodologies~~
~~exist; and~~

~~(2) either resampling and analysis within 30 days of~~
~~original sampling and analysis or splitting and analysis of~~
~~samples by two or more laboratories approved by the~~
~~department of agriculture and the department of health and~~

1 environmental sciences;

2 A monitoring program implemented by the department of
3 agriculture or the department of health and environmental
4 sciences must be designed to enable the departments to make
5 the following determinations, as applicable, whether:

6 (1) the agricultural chemical has entered ground water
7 as a direct result of use according to its label or as a
8 result of misuse;

9 (2) the agricultural chemical has a reasonable
10 probability of entering ground water due to migration
11 through soil;

12 (3) the level of the agricultural chemical in the
13 ground water or its rate of migration through soil is
14 increasing or decreasing with respect to standards and
15 interim numerical standards required by {section 9};

16 (4) the predictive procedures and data used to
17 establish the monitoring program are reliable; and

18 (5) the ground water has beneficial human or
19 environmental uses based on its classification;

20 The department of agriculture or the department of
21 health and environmental sciences shall give priority to
22 developing monitoring programs for agricultural chemicals
23 that the departments identify as likely to enter or as
24 having entered ground water based on predictive procedures
25 that provide a high degree of scientific certainty and that

1 are appropriate to the geographical areas where the
2 agricultural chemicals are used;

3 If the department of health and environmental sciences
4 finds it necessary to issue compliance orders to a person to
5 clean up ground water that has been impaired by use of
6 agricultural chemicals in violation of Title 75, chapter 5
7 or 6, it may, based on technical feasibility and economic
8 considerations, order the ground water to be cleaned up to a
9 level that is lower than the applicable standard or interim
10 numerical standard if the following findings are made:

11 (1) the agricultural chemical can be confined to
12 either the source, a specific property boundary, or the
13 defined area extent of the agricultural chemical plume;

14 (2) the ground water will not be used for drinking
15 purposes or no health risks will exist at a level of cleanup
16 that is lower than the applicable standard or interim
17 numerical standard;

18 (3) the agricultural chemical will not cause other
19 ground water impairment; and

20 (4) the responsible party has agreed to comply with an
21 existing agricultural chemical ground water management plan
22 or a plan under development but not finalized by rule at the
23 time of the determination by the department of health and
24 environmental sciences;

25 The board of health and environmental sciences is

1 responsible for adoption of certain ground water quality
 2 standards for agricultural chemicals as required by [section
 3 9]. The board shall adopt appropriate rules as necessary to
 4 comply with the special requirements and considerations that
 5 apply to the adoption of these standards as specified in
 6 [section 9], including acquisition of current and
 7 scientifically valid data from the United States
 8 environmental protection agency (EPA) and other sources and
 9 communications with EPA concerning the content and status of
 10 promulgated federal standards, nonpromulgated federal
 11 standards, and other relevant EPA regulations and materials.

12 ~~In--adopting--rules-to-regulate-the-adoption-of-interim~~
 13 ~~numerical-standards,-the-board-shall-include--the--following~~
 14 ~~criteria:~~

15 ~~{1}--use--of-any-significant-new-and-relevant-technical~~
 16 ~~information;~~

17 ~~{2}--reliance--on---valid---scientific---methodologies,~~
 18 ~~protocols,-and-procedures;~~

19 ~~{3}--priority-consideration-of-information-and-evidence~~
 20 ~~that--has--been--subjected-to-peer-review,-has-resulted-from~~
 21 ~~more-than-one-study,-and-is-consistent-with--other--credible~~
 22 ~~medical-or-toxicological-evidence;-and~~

23 ~~{4}--consultation--with--the--department-of-agriculture~~
 24 ~~and-EPA-regarding-any-assessments--or--conclusions--EPA--may~~
 25 ~~have-made-relative-to-available-toxicological-information-on~~

1 ~~the-agricultural-chemical-in-question-~~

2 ~~The-department-of-health-and-environmental-sciences-and~~
 3 ~~the--department--of--agriculture--shall-cooperatively-ensure~~
 4 ~~appropriate-and-timely-notice-to-affected-parties,-including~~
 5 ~~the-registrant-of-an-agricultural-chemical,-concerning--the~~
 6 ~~adoption-of-standards-and-interim-numerical-standards-~~

7 The department of agriculture is responsible for the
 8 development of agricultural chemical ground water management
 9 plans. The department shall adopt appropriate rules to
 10 ensure compliance with the requirements of [section 12],
 11 including procedures for the development of the plans,
 12 communication with sources of information needed for the
 13 plans, communication with citizens who may be affected by
 14 the plans, and criteria for ensuring that the content of the
 15 plans meets the objectives of preventing ground water
 16 impairment, minimizing the presence of agricultural
 17 chemicals in ground water, and protecting present and future
 18 beneficial uses of ground water as specified in [section
 19 12]. The department of agriculture shall also adopt rules
 20 specifying procedures for obtaining comments on agricultural
 21 chemical ground water management plans from the department
 22 of health and environmental sciences, for adoption of
 23 completed plans, and for making modifications to adopted
 24 plans.
 25

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1.** Short title. [Sections 1 through 24] may be cited as the "Montana Agricultural Chemical Ground Water Protection Act".

NEW SECTION. **Section 2.** Definitions. Unless the context requires otherwise, in [sections 1 through 24] the following definitions apply:

(1) "Agricultural chemical" means any of the following:

(a) a pesticide as defined in 80-8-102;

(b) an isomer, degradation, or metabolic product of a pesticide; or

(c) a commercial fertilizer as defined in 80-10-101.

(2) "Best management plans" and "best management practices" mean activities, procedures, and practices established by the department of agriculture, in consultation with the Montana state university extension service, to prevent or remedy the introduction of agricultural chemicals into ground water to the extent technically and economically practical.

(3) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(4) "Confirmatory procedure" means a process for verifying the detection of agricultural chemicals in water, soil, and other related media.

(5) "EPA" means the United States environmental protection agency.

(6) "Ground water" means any water of the state occupying the voids within a geologic formation and within the zone of saturation capable of yielding sufficient quantities of water to a well for beneficial use.

~~{7}--"Ground-water-impairment"--means-the-alteration--of the--physical,--chemical,--or-biological-properties-of-ground water-by-an-agricultural-chemical,--whether--from--discharge, use,--or-introduction,--that-prevents-or-is-likely-to-prevent the-present-or-future-beneficial-use-of-the-ground-water--as expressed-by-the-ground-water's-classification.~~

~~{8}{7}~~ (7) "Interim numerical standard" means a health-based number that expresses the concentration of an agricultural chemical allowed in ground water and that is adopted by a rule of the board pursuant to [section 9(5) or (6)].

~~{9}{8}~~ (8) "Margin of safety" means numerical margins that are applied to the no observable effect level in an agricultural chemical toxicology study and that are used by the EPA to extrapolate data obtained from studies of animals to humans, including sensitive individuals.

~~{10}{9}~~ (9) "No observable effect level" means the highest dose level of an agricultural chemical to which a laboratory animal is exposed, per unit of body weight, at which no

effect is observed, as established by EPA's pesticide registration process.

~~(11)~~(10) "Nonpoint source" means a diffuse source of agricultural chemicals resulting from activities of man over a relatively large area, the effects of which must normally be addressed or controlled by a management or conservation practice.

~~(12)~~(11) "Nonpromulgated federal standard" means a health advisory, OR A suggested no observable-effect ADVERSE RESPONSE level,--suggested--maximum--contaminant--level,--or suggested--ground--water--residue--guidance--level that is published but not promulgated by regulation by EPA and that is a suggested measure of the health risk represented by the concentration of an agricultural chemical in water.

~~(13)~~(12) "Numerical risk assessment" means a scientific procedure used to measure the statistical probability of human health risk associated with exposure to an agricultural chemical.

~~(14)~~(13) "Oncogenic potential" means the potential of an agricultural chemical to cause tumors in laboratory animals and the extrapolation of that potential to humans through use of statistical models and other evidence.

~~(15)~~(14) "Person" means any individual, group, firm, cooperative, corporation, association, partnership, political subdivision, state or federal government agency,

or other organization or entity.

~~(16)~~(15) "Point of standards application" means the specific location in an ~~aquifer~~ AQUIFER where ground water quality and quantity are sampled, measured, evaluated, or otherwise used by either the department or the department of health and environmental sciences to implement the provisions of [sections 1 through 24].

~~(17)~~(16) "Point source" means a point source as defined in 75-5-103, including but not limited to chemical mixing, loading, and storage sites and sites of agricultural chemical spills.

~~(18)~~(17) "Promulgated federal standard" means an agricultural chemical maximum contaminant level as established under the federal Safe Drinking Water Act, a national primary drinking water standard, or an interim drinking water regulation or other EPA regulation based on federal law.

~~(19)~~(18) "Registrant" means a person as defined in 80-8-102 and 80-10-101.

~~(20)~~(19) "Standard" means the numerical value expressing the concentration of an agricultural chemical in ground water that, WHEN EXCEEDED, presents a POTENTIAL human health risk over a lifetime of consumption and that is adopted by a rule of the board as required by [section 9].

~~(21)~~(20) "Use" means any act of handling or release of

an agricultural chemical or exposure of man or the environment to an agricultural chemical, including but not limited to application, mixing, loading, storage, disposal, or transportation.

NEW SECTION. Section 3. Policy. It is the public policy of this state to:

(1) protect ground water and the environment from impairment or degradation due to the use of agricultural chemicals;

(2) allow for the proper and correct use of agricultural chemicals ~~that are valuable and necessary for agricultural production and disease control~~;

(3) provide for the management of agricultural chemicals to prevent, minimize, and mitigate their presence in ground water, ~~considering the use of the ground water, and to provide special protection to high priority and highly susceptible ground water~~; and

(4) provide for education and training of agricultural chemical applicators and the general public on ground water protection, and agricultural chemical use, AND THE USE OF ALTERNATIVE AGRICULTURAL METHODS.

NEW SECTION. Section 4. Administration. (1) The department and the department of health and environmental sciences shall administer [sections 1 through 24].

(2) The department of health and environmental

sciences is responsible for the establishment and enforcement of agricultural chemical ground water standards and interim numerical standards as authorized by [section 9], ground water monitoring as authorized by [sections 10 and 11], providing comments to the department during the development of agricultural chemical ground water management plans, ~~conducting~~ PROMOTING research as set forth in [section 7], and related responsibilities set forth in Title 75, chapter 5.

(3) The department is responsible for the preparation, implementation, and enforcement of agricultural chemical ground water management plans as authorized by [sections 12 and 16 through 24], public education as authorized by [section 6], ground water monitoring as authorized by [sections 10 and 11], other duties related to promoting research as set forth in [section 7], and related responsibilities set forth in Title 80, chapters 8 and 10.

(4) [Sections 1 through 24] do not limit the department's responsibility to enforce agricultural chemical label directions and prohibitions.

(5) The administration of [sections 1 through 24], including rulemaking and hearing functions authorized by [sections 1 through 24], must be conducted in accordance with the Montana Administrative Procedure Act, Title 2, chapter 4.

1 **NEW SECTION. Section 5. Rulemaking.** (1) The board
 2 shall adopt rules for the administration of [sections 1
 3 through 24] for which the board and the department of health
 4 and environmental sciences have responsibility. These rules
 5 must include but are not limited to:

6 (a) standards and interim numerical standards for
 7 agricultural chemicals in ground water as authorized by
 8 [section 9];

9 (b) procedures for ground water monitoring as
 10 authorized by [sections 10 and 11];

11 (c) field and laboratory operational quality
 12 assurance, quality control, and confirmatory procedures as
 13 authorized by [sections 7, 10, and 11], which may include,
 14 through adoption by reference, procedures that have been
 15 established or approved by EPA for quality assurance and
 16 quality control;

17 (d) standards for maintaining the confidentiality of
 18 data and information declared confidential by EPA and the
 19 confidentiality of chemical registrant data and information
 20 protected from disclosure by federal or state law as
 21 required by [section 8]; and

22 (e) administrative civil penalties as authorized by
 23 [section 22].

24 (2) The department shall adopt rules necessary to
 25 carry out its responsibilities under [sections 1 through

24]. These rules must include but are not limited to:

2 (a) procedures for ground water monitoring as
 3 authorized by [sections 10 and 11];

4 (b) the content and procedures for development of
 5 agricultural chemical ground water management plans,
 6 including the content of best management practices and best
 7 management plans, procedures for obtaining comments from the
 8 department of health and environmental sciences on the
 9 plans, and the adoption of completed plans and plan
 10 modifications as authorized by [section 12];

11 (c) standards for maintaining the confidentiality of
 12 data and information declared confidential by EPA and of
 13 chemical registrant data and information protected from
 14 disclosure by federal or state law as required by [section
 15 8];

16 (d) field and laboratory operational quality
 17 assurance, quality control, and confirmatory procedures as
 18 authorized by [sections 7, 10, and 11], which may include,
 19 through adoption by reference, procedures that have been
 20 established or approved by EPA for quality assurance and
 21 quality control;

22 (e) emergency procedures as authorized by [section
 23 20];

24 (f) procedures for issuance of compliance orders as
 25 authorized by [section 18]; and

(g) procedures for the assessment of administrative civil penalties as authorized by [section 22].

NEW SECTION. Section 6. Educational programs. (1) The department, in cooperation with the Montana state university extension service, shall develop and conduct appropriate educational programs to promote the policy specified in [section 3]. The department and the Montana state university extension service may charge a fee for the educational programs commensurate with the costs of program development and administration.

(2) All fees collected by the department pursuant to this section must be deposited in the state special revenue fund. The department may spend the funds for the purposes set forth in this section.

(3) All fees collected by the Montana state university extension service must be deposited in a special account identified for this purpose. The extension service may spend the funds for the purposes set forth in this section.

NEW SECTION. Section 7. Research. The department or the department of health and environmental sciences may SHALL promote, for the purposes described in [section 3], cooperative ground water research programs with units of the university system and associated agricultural experiment stations, the bureau of mines and geology, and other appropriate agencies, organizations, and individuals.

NEW SECTION. Section 8. Confidentiality. (1) The department and the department of health and environmental sciences shall maintain the confidentiality of data declared confidential by EPA and chemical registrant data and information protected from disclosure by federal or state law.

(2) The department of health and environmental sciences shall comply with the requirements of 75-5-105 and the department shall comply with the requirements of 80-8-107 and 80-10-210, except as otherwise provided by this section.

NEW SECTION. Section 9. Ground water standards. (1) The board shall adopt standards and, as applicable, interim numerical standards for agricultural chemicals in ground water. The standards must be the same as any promulgated or nonpromulgated federal standard established by EPA, although the board may determine, pursuant to the requirements of subsection {7} (4), that an interim numerical standard different from either a promulgated or nonpromulgated federal standard is justified. PROMULGATED FEDERAL STANDARDS MUST RECEIVE PREFERENCE. Except as provided in subsection--{7} SUBSECTIONS (3) AND (4), if more than one nonpromulgated federal standard exists for an agricultural chemical, the board must adopt the most recently established nonpromulgated federal standard.

(2) The board is not required to adopt a standard or interim numerical standard for every agricultural chemical registered in the state. The only standards and interim numerical standards required are for those agricultural chemicals:

(a) that are addressed by promulgated and nonpromulgated federal standards;

(b) the presence of which has been verified in ground water as provided in [section 10]; or

(c) that the department and the department of health and environmental sciences predict may appear in ground water, in accordance with the procedures and determinations specified in [sections 10 and 11].

~~{3}--Before-either-the-department-or-the-department--of health--and--environmental--sciences--provides--monitoring results-or-before-either--may--order--a--person--to--conduct monitoring-and-prior-to-the-department-taking-an-enforcement action--under--{sections--1-through-24}-or-the-department-of health-and--environmental--sciences--taking--an--enforcement action--under--Title--75,--chapter--5,--the--board-must-have established-a-standard-or-interim-numerical-standard-for-the agricultural-chemical-in-question,--except--in--emergency situations--as--specified--in--{section-20}-and-75-5-621,--as applicable.~~

~~{4}--The-department-may-not-develop--and--implement--an~~

~~agricultural-chemical-ground-water-management-plan-for-a particular-agricultural-chemical-in-accordance-with-{section 12}-until-a-standard-or-interim-numerical-standard-for--that chemical--has--been--established--by--the-board-or-until-EPA requires-the-development-of-an-agricultural-chemical-ground water-management-plan.~~

~~{5}{3}~~ If no promulgated federal standard has been adopted and OR no nonpromulgated federal standard has been published for an agricultural chemical for which the board is required to establish a standard or interim numerical standard as specified in subsections (2)(b) and (2)(c), the department of health and environmental sciences shall request EPA to establish a promulgated or nonpromulgated federal standard. If the department of health and environmental sciences determines that EPA cannot comply with the request within 60 15 days, the board shall adopt an interim numerical standard, provided that the board shall review the interim numerical standard whenever EPA adopts a promulgated federal standard or publishes a nonpromulgated federal standard for the agricultural chemical in question.

~~{6}{4}~~ The board may adopt an interim numerical standard that is different from either a promulgated or nonpromulgated federal standard, if there is significant new and relevant technical information available that is scientifically valid and--that--has-not-been-considered-by

1 EPA. The board shall review the interim numerical standard
2 when EPA ESTABLISHES OR revises the promulgated or
3 nonpromulgated federal standard for the agricultural
4 chemical in question.

5 ~~{7}(5) In--addition--to--criteria--the-board-considers~~
6 ~~pursuant-to-rules-adopted-under-{section-5}-for-the-adoption~~
7 ~~of--standards;--the~~ THE board shall base CONSIDER THE
8 FOLLOWING IN ADOPTING any interim numerical standard it
9 adopts under either subsection ~~{5}-or-{6}~~ on (3) OR (4):

10 (a) EFFECTS ON a person weighing 70 kilograms and
11 drinking 2 liters of water per day over a lifetime; and

12 (b) EPA's conclusions regarding the no observable
13 effect level, including the margin of safety identified by
14 EPA when scientific data indicates oncogenic potential for
15 the agricultural chemical and EPA has determined that a
16 numerical risk assessment is not justified, is
17 inappropriate, or does not serve as the primary
18 toxicological basis for regulation.

19 ~~{8}(6)~~ Nothing in this section may interfere with the
20 board's responsibility to adopt rules and standards under
21 Title 75, chapter 6.

22 NEW SECTION. Section 10. Monitoring programs. (1) The
23 department or the department of health and environmental
24 sciences may SHALL conduct monitoring programs to determine:

25 (a) whether residues of agricultural chemicals are

1 present in ground water; and

2 (b) the likelihood of an agricultural chemical
3 entering TO ENTER ground water, if either department
4 determines that sufficient valid scientific data is
5 available to reasonably predict the behavior of a particular
6 agricultural chemical in the soil and-ground-water.

7 (2) ANY PERSON WHO RECEIVES A CHEMICAL ANALYSIS
8 INDICATING THE PRESENCE OF AN AGRICULTURAL CHEMICAL IN
9 GROUND WATER SHALL NOTIFY THE DEPARTMENT OF HEALTH AND
10 ENVIRONMENTAL SCIENCES.

11 ~~{2}(3)~~ The department and the department of health and
12 environmental sciences shall evaluate all information
13 relating to this section that is received from any person
14 based upon standard procedures, protocols, and confirmatory
15 procedures established by rules. Information found to be
16 insufficient based on the adopted procedures and protocols,
17 including analytical results, may be used only for
18 informational purposes.

19 NEW SECTION. Section 11. Evaluation and use of
20 monitoring results. (1) When providing preliminary
21 monitoring results to--ground--water--users or confirmed
22 monitoring results to the GROUND WATER users or the public,
23 the departments shall also provide the ANY applicable
24 standard or interim numerical standard.

25 (2) When monitoring results reveal the presence of an

1 agricultural chemical in ground water:

2 (a) the department of health and environmental
3 sciences is the lead department for determining health
4 risks; and

5 (b) the department is the lead department for
6 determining compliance with agricultural chemical ground
7 water management plans authorized by [section 12] and with
8 agricultural chemical registration, use, and labeling
9 requirements and conditions pursuant to Title 80, chapters 8
10 and 10.

11 (3) The department and the department of health and
12 environmental sciences shall cooperatively evaluate the
13 results of monitoring programs authorized by [section 10] to
14 determine, as applicable:

15 ~~{a}--whether--the--presence-of-an-agricultural-chemical~~
16 ~~in-ground-water-meets-or-exceeds;~~

17 ~~{i}--an--established--standard--or--interim--numerical~~
18 ~~standard-at-a-point-of-standards-application; or~~

19 ~~{ii}--any----requirements-----associated----with----the~~
20 ~~classification-of-the-ground-water;~~

21 ~~{b}--whether-the--conditions--required--by--a--specific~~
22 ~~agricultural--chemical--ground--water-management-plan-as-set~~
23 ~~forth-in-[section-12]-are-appropriate-or-have-been-violated;~~

24 ~~{c}--the-geographical-or-hydrogeological-extent-of--the~~
25 ~~agricultural-chemical-in-the-ground-water; and~~

1 ~~{d}--whether--there--is--a--definite-trend-of-increased~~
2 ~~presence-of-the-agricultural-chemical-in-ground-water--based~~
3 ~~on--the-percentage-of-change-in-concentrations-measured-at-a~~
4 ~~single-monitoring-site-or-at-different-monitoring-sites-over~~
5 ~~a-reasonable-period-of-time.~~

6 (4) Based on the results of monitoring, the department
7 and the department of health and environmental sciences
8 shall implement appropriate actions specified in [sections 1
9 through 24] to mitigate any existing impacts of an
10 agricultural chemical found in ground water and to prevent
11 future impacts of an agricultural chemical that may be found
12 in ground water, in relation to human health, agriculture,
13 and the environment.

14 (5) The department may not undertake compliance and
15 enforcement actions authorized by [sections 1 through 24]
16 and the department of health and environmental sciences may
17 not undertake compliance and enforcement actions authorized
18 by Title 75, chapter 5, unless there is sufficient evidence
19 collected through:

20 (a) monitoring at a point of standards application or
21 through;

22 (B) other investigations that reveal that a person
23 using an agricultural chemical or introducing or discharging
24 the chemical into ground water has violated a provision of
25 [section 17] or Title 75, chapter 5; or

~~{b}{C}~~ monitoring that reveals a significant probability for an agricultural chemical to enter ground water.

~~{6}--Any-actions-taken-by-the-departments-in-accordance with-subsections-{4}-and-{5}-must-be-consistent-with-the priority--accorded--to--and-the-beneficial-use-of-the-ground water-as-expressed-by--its--classification.---The--type--and complexity---of---the---departments'-actions--may--be--more comprehensive-in-situations-involving--higher--ground--water classifications.---Actions-involving-the-lowest-ground-water classification-may-be-limited-to-minimizing--further--impact unless--the--departments--jointly--determine-that-the-lowest classified-ground-water-will-impair-or-is-likely--to--impair other-state-waters-that-have-a-higher-classification.~~

NEW SECTION. Section 12. Agricultural chemical ground water management plans. (1) The department may SHALL develop and implement a general state agricultural chemical ground water management plan TO ACHIEVE THE POLICIES OF [SECTION 3]. This plan may MUST include general program elements set forth in [sections 1 through 24] and best management plans and best management practices. PRIOR TO PUBLICATION OF THE PLAN, THE DEPARTMENT SHALL PROVIDE A 30-DAY PERIOD FOR THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO PREPARE AND SUBMIT COMMENTS ON THE PLAN.

(2) Except as provided in subsection ~~{10}~~ (11), the

department shall develop and implement agricultural chemical ground water management plans specific to particular agricultural chemicals and to a defined geographical area. Within available resources, the department shall prioritize preparation of specific agricultural chemical ground water management plans based on the following criteria:

(a) when the level of an agricultural chemical found in ground water is at 50% of the standard or interim numerical standard at a point of standards application and is scientifically validated;

(b) when a definite trend of increased presence of the agricultural chemical in ground water at a point of standards application is scientifically validated;

(C) WHEN AGRICULTURAL CHEMICALS HAVE BEEN DETERMINED TO HAVE MIGRATED INTO THE GROUND WATER FROM THE POINT OF DETECTION;

~~{c}{D}~~ when EPA proposes to suspend or cancel registration of an agricultural chemical, prohibits or restricts the chemical's sale or use in the state, or otherwise initiates action against a chemical because of ground water concerns and when EPA's action, restriction, or prohibition will be implemented unless the state develops an adequate management plan; or

~~{d}{E}~~ when agricultural chemicals that possess or are suspected of possessing properties that indicate potential

to migrate to ground water are being applied on areas underlaid by ground water that is vulnerable to impairment.

(3) ANY PERSON USING AN AGRICULTURAL CHEMICAL THAT IS ADDRESSED BY A SPECIFIC AGRICULTURAL CHEMICAL GROUND WATER MANAGEMENT PLAN IN THE GEOGRAPHICAL REGION THAT IS ADDRESSED BY THE PLAN SHALL COMPLY WITH THE PLAN. The department may SPECIFICALLY identify and designate persons ~~using--an agricultural--chemical--that--is--addressed--by--a--specific agricultural--chemical--ground--water--management--plan--in--the geographical--area--that--is--addressed--by--the--plan--~~ Designated persons ~~shall comply with the plan.~~ WHO ARE UNDER THE PLAN AND MAY INFORM ANY PERSON ABOUT THE PLAN.

(4) THE DEPARTMENT SHALL PRIORITIZE PREPARATION OF SPECIFIC AGRICULTURAL CHEMICAL GROUND WATER MANAGEMENT PLANS IN CONSIDERATION OF THE SPECIFIC CIRCUMSTANCES OF EACH AREA AND WITHIN AVAILABLE RESOURCES.

~~(4)(5)~~ In developing general and specific agricultural chemical ground water management plans, the department shall consider the current and potential beneficial use of the ground water included in or affected by the plans as ~~expressed--by--the--classification--of--the--ground--water.~~ If the ground water has not been classified, the department shall consider it to be included in the classification representing the highest quality of ground water until such time as the ground water is classified by the board, and the

department may proceed to develop an agricultural chemical ground water management plan as required by subsection (2).

~~(5)(6)~~ The department may request the board DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES to classify certain ground water and may collect the data and information required by the board DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES to classify the ground water. If adequate technical data and financial resources are available as determined by the board DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES, the board DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES shall classify ground water at locations as requested by the department.

~~(6)(7)~~ A specific agricultural chemical ground water management plan must include:

(a) requirements to prevent ground water impairment that are based on ground water use, value, and vulnerability and that address all applicable aspects of agricultural chemical use; and

(b) requirements to prevent or minimize further presence of the agricultural chemical in the ground water and to provide protection for the present and future beneficial use of the ground water.

~~(7)(8)~~ A specific agricultural chemical ground water management plan may include but is not limited to the following elements:

1 (a) identification of geographical areas where an
 2 agricultural chemical may be used;
 3 (b) ground water, soil, meteorological, and geological
 4 characteristics;
 5 (c) best management plans and best management
 6 practices;
 7 (d) identification of high priority ground water;
 8 (e) certification, licensing, training, and education
 9 requirements for persons using agricultural chemicals;
 10 (f) identification of setback areas around water wells
 11 where certain activities may be restricted;
 12 (g) agricultural chemical application rates and timing
 13 and related use criteria;
 14 (h) alternative pest management techniques, including
 15 integrated pest management;
 16 (i) other requirements for pesticides, as set forth in
 17 Title 80, chapter 8, and related rules and for fertilizers,
 18 as set forth in Title 80, chapter 10, and related rules; and
 19 (j) EPA requirements; AND
 20 (K) ALTERNATIVE SOIL FERTILITY PRACTICES.
 21 ~~{8}~~(9) When developing and implementing a specific
 22 agricultural chemical ground water management plan, the
 23 department shall consider the ~~beneficial-uses~~ BENEFITS OF
 24 APPROPRIATE USE of the agricultural chemical and shall
 25 consult with the Montana state university extension service.

1 ~~{9}~~(10) Within available resources, the department
 2 shall contact users of an agricultural chemical and user
 3 groups that will be subject to a general or specific
 4 agricultural chemical ground water management plan to
 5 request their recommendations concerning the development of
 6 the plan.
 7 ~~{10}~~(11) The department ~~is-not-required-to~~ MAY develop
 8 or AND implement a commercial fertilizer ground water
 9 management plan ~~until-EPA-implements-a-program-to-protect~~
 10 ~~ground-water-from-fertilizers-Prior-to-the-department~~
 11 ~~implementing-an-agricultural-chemical-ground-water~~
 12 ~~management-plan-for-a-commercial-fertilizer-the-department~~
 13 ~~and-the-department-of-health-and-environmental-sciences~~
 14 ~~shall-determine-the-source-of-the-nitrate-or-other-component~~
 15 ~~of-fertilizer-present-in-ground-water-If-the-source-is-not~~
 16 ~~from-the-use-of-a-commercial-fertilizer-the-department-may~~
 17 ~~not-implement-this-section~~ IF THE DEPARTMENT AND THE
 18 DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES DETERMINE
 19 THAT RESIDUES FROM COMMERCIAL FERTILIZER ARE PRESENT IN THE
 20 GROUND WATER.
 21 ~~{11}~~(12) The department shall adopt specific
 22 agricultural chemical ground water management plans through
 23 rulemaking, provided that the department may implement
 24 emergency plans as set forth in 80-8-105(4) or as authorized
 25 by the Montana Administrative Procedure Act. Prior to

rulemaking, the department shall provide to the department of health and environmental sciences a copy of each proposed specific agricultural chemical ground water management plan. A 30-day period must be provided for the department of health and environmental sciences to prepare comments on the plan.

~~†12†~~(13) The department shall review agricultural chemical ground water management plans periodically to determine if the requirements contained in the plans need to be modified based on new scientific data and information. Plan modifications must be accomplished by rulemaking.

(14) A PERSON WHO SELLS AGRICULTURAL LAND THAT IS SUBJECT TO THE PROVISIONS OF A SPECIFIC AGRICULTURAL CHEMICAL GROUND WATER MANAGEMENT PLAN SHALL PROVIDE THE BUYER WITH WRITTEN NOTICE ABOUT HIS OBLIGATIONS UNDER THE PLAN AND SHALL FORWARD A COPY OF THE NOTICE TO THE DEPARTMENT. THE DEPARTMENT IS NOT RESPONSIBLE FOR ENFORCEMENT OF THIS SUBSECTION.

NEW SECTION. Section 13. Department of health and environmental sciences to amend rules. The department of health and environmental sciences shall amend Rules 16.20.603, 16.20.1003, 16.20.1011, and 16.20.1012, Administrative Rules of Montana, to define A SPECIFIC AGRICULTURAL CHEMICAL GROUND WATER MANAGEMENT PLAN PREPARED PURSUANT TO [SECTION 12] AS reasonable land, soil, and water

conservation practices ~~to--include~~ FOR point and nonpoint source agricultural operations involving the use of agricultural chemicals ~~that--are--conducted--in--compliance--with specific--agricultural--chemical--ground--water--management--plans prepared--pursuant--to--{section--12}~~ and to exclude those agricultural operations from Montana ground water pollution control system permit requirements.

NEW SECTION. Section 14. Agricultural chemical ground water protection accounts -- acceptance and expenditure of gifts, grants, and funds. (1) There is a department of agriculture agricultural chemical ground water protection special revenue account and a department of health and environmental sciences agricultural chemical ground water protection special revenue account within the state special revenue fund established by 17-2-102.

(2) Both accounts named in subsection (1) may receive funds from any source as gifts, grants, cost-share funds, or other funds designated for agricultural chemical ground water protection purposes.

(3) The department and the department of health and environmental sciences may individually or jointly spend funds received by their respective accounts for the purposes authorized by [sections 1 through 24].

NEW SECTION. Section 15. Special funding. (1) A fee of \$15 is assessed for the registration of pesticides in

1 addition to the fee imposed by 80-8-201(4).

2 (2) A fee of \$10 is assessed for the registration of
3 fertilizers in addition to the fee imposed by 80-10-201(1).
4 The additional fee must be used for the ground water
5 protection responsibilities of the department relating to
6 fertilizers. Revenues collected from this fee must be
7 credited to the commercial fertilizer account within the
8 state special revenue fund for the administration of
9 [sections 1 through 24].

10 NEW SECTION. Section 16. Authority to investigate and
11 inspect. Authorized representatives of the department,
12 consistent with the responsibilities set forth in [sections
13 1 through 24] and upon presentation of department-issued
14 credentials, may at reasonable times or under emergency
15 conditions enter upon any public or private property to:

16 (1) investigate conditions relating to compliance with
17 agricultural chemical labels, agricultural chemical ground
18 water management plans, monitoring requirements, or ground
19 water protection requirements and to investigate violations
20 of plans or compliance orders;

21 (2) gain access to and copy any records required by
22 the department in the administration of [sections 1 through
23 24];

24 (3) establish and inspect monitoring equipment; and

25 (4) sample ground water, including drinking water

1 supply sources such as wells and similar structures.

2 NEW SECTION. Section 17. Prohibited activity. It is
3 unlawful for a person to:

4 ~~{1}--cause-ground-water-impairment-or-to-place-or-cause~~
5 ~~to-be-placed-any-agricultural-chemical-where-it-is-likely-to~~
6 ~~cause-ground-water-impairment,--except-when-the-use-of-an~~
7 ~~agricultural-chemical-was-~~

8 ~~{a}--in-accordance-with-label-directions,--including~~
9 ~~precautions-listed-with-those-directions,--or~~

10 ~~{b}--in-compliance-with-a-specific-agricultural~~
11 ~~chemical-ground-water-management-plan;~~

12 ~~{2}(1)~~ violate any provision of a specific
13 agricultural chemical ground water management plan;

14 ~~{3}(2)~~ violate any lawful order issued pursuant to
15 [sections 1 through 24]; or

16 ~~{4}(3)~~ violate any provision of [sections 1 through
17 24].

18 NEW SECTION. Section 18. Compliance orders. (1) In
19 furtherance of [section 17], the department may issue a
20 compliance order to any person violating a standard, an
21 interim numerical standard, or any other requirement
22 established pursuant to [sections 1 through 24]. The
23 department shall coordinate its proposed actions pursuant to
24 this section with proposed actions of the department of
25 health and environmental sciences pursuant to 75-5-613, if

any. Issuance of a compliance order under [sections 1 through 24] precludes the department from taking other enforcement actions for the same violation under Title 80, chapter 8 or 10.

(2) The department may issue a compliance order to any person, including the person's employees, agents, and subcontractors, whether or not the person is subject to a specific management plan, to require the cleanup of any agricultural chemical that the person has accidentally or purposely dumped, spilled, or misused or unlawfully used that has a significant probability of entering ground water.

(3) When issuing a compliance order, the department may require a person who has violated a provision of [section 17] to conduct monitoring to assist in determining the presence or level of concentration of an agricultural chemical in ground water and the effectiveness of cleanup efforts. The department shall specify criteria in the compliance order for determining the duration of monitoring.

(4) A compliance order must specify the requirement violated and must set a time for compliance. In establishing a time for compliance, the department shall take into account the seriousness of the violation and any good-faith efforts that the person has made to comply with the requirement that has been violated. A compliance order issued under this section must be served either personally

by a person qualified to perform service under the Montana Rules of Civil Procedure or by certified mail.

~~(5) A person may provide information to the department, including data concerning the person's economic situation. The department shall consider this information in determining the amount of the person's financial obligation for cleanup under this section.~~

NEW SECTION. **Section 19.** Injunctions authorized. The department may commence a civil action seeking appropriate relief, including a permanent or temporary injunction, pursuant to 80-8-306 or 80-10-303, as applicable, for a violation that is subject to a compliance order under [section 18].

NEW SECTION. **Section 20.** Emergencies. Notwithstanding any other provisions of [sections 1 through 24], if the department finds that an emergency exists that requires immediate action to protect ground water from agricultural chemicals or to prevent use of ground water impaired or likely to be impaired by agricultural chemicals, the department may, without notice or hearing, issue necessary orders or adopt rules to protect public health, welfare, and safety. The duration of an emergency order or rule is limited to the emergency provisions of the Montana Administrative Procedure Act as specified in 2-4-303.

NEW SECTION. **Section 21.** Violators subject to

1 penalties. (1) A person found to be in violation of
2 [sections 1 through 24] or a rule established pursuant to
3 [sections 1 through 24] is subject to the penalty provisions
4 of [sections 22 through 24].

5 (2) For the purpose of this section, the term "person"
6 means, in addition to the definition in [section 2], any
7 responsible corporate officer.

8 (3) Nothing in [sections 1 through 24] may be
9 construed as requiring the department or an authorized agent
10 of the department to report minor violations of [sections 1
11 through 24] for prosecution when the department or a duly
12 authorized agent believes that the public interest will be
13 best served by other remedial action, by a suitable notice
14 of warning in writing, or by a lawful written order.

15 (4) Action under [sections 22 through 24] does not bar
16 the department from enforcement of [sections 1 through 24]
17 or of rules or orders issued under [sections 1 through 24]
18 by injunction or other appropriate remedy.

19 (5) The department and the department of health and
20 environmental sciences ~~may not both subject a violator~~ SHALL
21 COORDINATE ACTIONS WHEN A VIOLATOR IS SUBJECT to the
22 penalties authorized by [sections 22 through 24] and
23 penalties authorized by Title 75, chapter 5, for the same
24 violation.

25 NEW SECTION. **Section 22.** Administrative civil

1 penalty. (1) A person who commits a violation of [sections 1
2 through 24] may be assessed an administrative civil penalty
3 by either the department or the department of health and
4 environmental sciences, consistent with their respective
5 responsibilities, of not more than \$1,000 for each offense.
6 Farm applicators possessing a pesticide permit or using a
7 fertilizer may not be assessed an administrative civil
8 penalty of more than \$500 for the first offense. Assessment
9 of a civil penalty may be made in conjunction with any other
10 warning, order, or administrative action authorized by
11 [sections 1 through 24] or Title 75, chapter 5, that is
12 issued or undertaken by either the department or the
13 department of health and environmental sciences.

14 (2) No administrative civil penalty may be assessed
15 unless the person charged is given notice and opportunity
16 for a hearing pursuant to Title 2, chapter 4, part 6, of the
17 Montana Administrative Procedure Act.

18 (3) In determining an appropriate administrative civil
19 penalty, the responsible department shall consider the
20 effect on the person's ability to continue in business, the
21 gravity of the violation that occurred, the degree of care
22 exercised by the offender, and whether significant harm
23 resulted to public health, agricultural crops, livestock, or
24 the environment.

25 (4) If the responsible department is unable to collect

the administrative civil penalty or if a person fails to pay all or a set portion of the administrative civil penalty as determined by the responsible department, the department may seek to recover the amount in the appropriate district court.

(5) A person against whom the department or the department of health and environmental sciences has assessed an administrative civil penalty may, within 30 days of the final agency action making the assessment, appeal the assessment to the district court of the county in which the violation is alleged to have occurred. A jury trial must be granted when demanded under Rule 38 of the Montana Rules of Civil Procedure.

NEW SECTION. Section 23. Judicial civil penalty. A person who commits a violation as specified in [section 17] shall be subject to a judicial civil penalty not to exceed \$10,000. Each occurrence constitutes a separate violation.

NEW SECTION. Section 24. Criminal penalties. (1) A person who intentionally commits a violation as specified in [section 17] is guilty of an offense and subject to a fine not to exceed \$25,000 for each day the violation continues or imprisonment for not more than 1 year, or both. Following an initial conviction under this section, a subsequent conviction subjects a person to a fine of not more than \$50,000 for each day the violation continues or imprisonment

for not more than 2 years, or both.

(2) Except as otherwise provided in [sections 1 through 24], a person convicted of violating any of the provisions of [sections 1 through 24] or rules issued under [sections 1 through 24] or who misrepresents, impedes, obstructs, hinders, or otherwise prevents or attempts to prevent the department from performance of its duties in connection with the provisions of [sections 1 through 24] is guilty of a misdemeanor and shall be fined not less than \$100 but not more than \$1,500.

(3) A person who knowingly makes any false statement, representation, or certification in any record, report, or other document filed or required to be maintained under [sections 1 through 24] or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under [sections 1 through 24] shall, upon conviction, be punished by a fine of not more than \$5,000 or by imprisonment for not more than 6 months, or both.

(4) A person who with intent to defraud uses or reveals confidential information and data provided under [sections 1 through 24] or rules issued under [sections 1 through 24] shall, upon conviction, be fined not more than \$5,000 or imprisoned for not more than 1 year, or both.

Section 25. Section 75-5-105, MCA, is amended to read:

1 **"75-5-105. Confidentiality of records. Any Except as**
 2 **provided in [section 8], any information concerning sources**
 3 **of pollution which is furnished to the board or department**
 4 **or which is obtained by either of them is a matter of public**
 5 **record and open to public use. However, any information**
 6 **unique to the owner or operator of a source of pollution**
 7 **which would, if disclosed, reveal methods or processes**
 8 **entitled to protection as trade secrets shall be maintained**
 9 **as confidential if so determined by a court of competent**
 10 **jurisdiction. The owner or operator shall file a**
 11 **declaratory judgment action to establish the existence of a**
 12 **trade secret if he wishes such information to enjoy**
 13 **confidential status. The department shall be served in any**
 14 **such action and may intervene as a party therein. Any**
 15 **information not intended to be public when submitted to the**
 16 **board or department shall be submitted in writing and**
 17 **clearly marked as confidential. The data describing physical**
 18 **and chemical characteristics of a waste discharged to state**
 19 **waters shall not be considered confidential. The board may**
 20 **use any information in compiling or publishing analyses or**
 21 **summaries relating to water pollution if such analyses or**
 22 **summaries do not identify any owner or operator of a source**
 23 **of pollution or reveal any information which is otherwise**
 24 **made confidential by this section."**

25 **Section 26. Section 75-5-301, MCA, is amended to read:**

1 **"75-5-301. Classification and standards for state**
 2 **waters. The Consistent with the provisions of [section 9],**
 3 **the board shall:**

4 (1) establish and modify the classification of all
 5 waters in accordance with their present and future most
 6 beneficial uses;

7 (2) formulate standards of water purity and
 8 classification of water according to its most beneficial
 9 uses, giving consideration to the economics of waste
 10 treatment and prevention;

11 (3) review, from time to time at intervals of not more
 12 than 3 years, established classifications of waters and
 13 standards of water purity and classification."

14 **Section 27. Section 80-8-105, MCA, is amended to read:**

15 **"80-8-105. Rules. (1) The department may adopt by**
 16 **reference without a public hearing regulations adopted under**
 17 **the Federal Insecticide, Fungicide, and Rodenticide Act, as**
 18 **amended. The department may, after a public hearing, adopt**
 19 **all rules necessary to carry out this chapter.**

20 (2) The rules may prescribe methods of:

21 (a) registration, suspension or cancellation of
 22 registration, application, use or restricting use,
 23 prohibiting use, offering or exposing for sale of any
 24 pesticide;

25 (b) determining whether pesticides are highly toxic to

1 man;

2 (c) determining standards of coloring or discoloring
3 for pesticides and subjecting pesticides to the requirements
4 of 80-8-202;

5 (d) licensing commercial applicators, operators, and
6 dealers, establishing methods of recordkeeping for
7 applicators, operators, and dealers, and providing for the
8 review of the records by the department's authorized agent
9 and the submission of the records to the department upon
10 written request;

11 (e) issuing farm applicator special-use permits and
12 the maintenance and submission of records by farm
13 applicators issued special-use permits;

14 (f) collection, examination, and standard deviation
15 from guarantee analysis and umpire analysis of pesticides
16 and devices;

17 (g) operating and maintaining equipment used by
18 applicators;

19 (h) developing examinations which shall be held
20 periodically throughout the state;

21 (i) establishing the form and content of all
22 applications for licenses and permits;

23 (j) designating pesticides that may be sold at retail
24 for home, yard, garden, and lawn use. The department may
25 also limit retail sale of pesticides, up to a specific

1 number of pounds or gallons and concentration which would be
2 sublethal to humans and animals if small amounts of it were
3 accidentally swallowed, inhaled, sprayed, or dusted on the
4 skin.

5 (k) revoking licenses and permits;

6 (l) registering or controlling any spray adjuvant,
7 such as a wetting agent, spreading agent, deposit builder,
8 adhesive, emulsifying agent, deflocculating agent, water
9 modifier, or similar agent with or without toxic properties
10 of its own intended to be used with any other pesticide as
11 an aid to the application or effect of that other pesticide,
12 whether or not distributed in a package or container
13 separate from that of a pesticide with which it is to be
14 used;

15 (m) registering pesticide-fertilizer and other
16 chemical blends or, instead of registration, establishing
17 licensing, inspection, and fees for blending plants;

18 (n) establishing registration procedures for devices,
19 with a fee not to exceed \$5 per type of device, specifying
20 classes of devices to be registered and providing for
21 additional requirements;

22 (o) imposing conditions for renewal of dealer,
23 applicator, and operator licenses and permits, including
24 requalification training;

25 (p) establishing procedures for implementing and

1 administering the civil penalties under 80-8-306; and
 2 (q) establishing fees for training courses and
 3 materials.
 4 (3) (a) Whenever Consistent with the provisions of
 5 [sections 1 through 24], whenever the department finds that
 6 those rules are necessary to carry out the purposes and
 7 intent of this chapter, the rules may relate to the time,
 8 place, manner, and method of registration, suspension or
 9 cancellation of registration, application, or selling of the
 10 pesticides, may restrict or prohibit use of pesticides in
 11 the state or in designated areas during specified periods of
 12 time, and shall encompass all reasonable factors which the
 13 department considers necessary to prevent damage or injury
 14 to:
 15 (i) persons, animals, crops, or pollinating insects
 16 from the effect of drift or careless application;
 17 (ii) the environment;
 18 (iii) plants, including forage plants;
 19 (iv) wildlife;
 20 (v) fish and other aquatic life.
 21 (b) In issuing the rules, the department shall give
 22 consideration to pertinent research findings and
 23 recommendations of other agencies of this state or of the
 24 federal government.
 25 (4) If the department finds that an emergency exists

1 which requires immediate action with regard to the
 2 registration, use, or application of pesticides, the
 3 department may, without notice or hearing, issue necessary
 4 orders or rules to protect the public health, welfare, and
 5 safety. An order or rule issued under this subsection is
 6 effective for the period prescribed by the Montana
 7 Administrative Procedure Act. If the department determines
 8 that the emergency order or rule should remain in effect, a
 9 public hearing under 80-8-106 shall be held within the above
 10 period to determine whether the order or rule should be
 11 adopted by the department.

12 (5) All rules and orders issued by the department
 13 shall be in writing, shall be entered in full in books to be
 14 kept by the department for that purpose, shall be indexed,
 15 and shall be public records open for inspection at all times
 16 during reasonable office hours. Except for orders
 17 establishing or changing rules of practice and procedure,
 18 all orders made and published by the department shall
 19 include and be based upon written findings of fact. A copy
 20 of any rule or order certified by the department shall be
 21 received in evidence in all courts of this state with the
 22 same effect as the original."

23 **Section 28.** Section 80-8-107, MCA, is amended to read:
 24 ***80-8-107. Public information.** The Except as provided
 25 in [sections 1 through 24], the department as it deems

proper may, alone or in cooperation with other state or federal agencies, publish information regarding aspects of the use and application sections or registration sections of this chapter. This information cannot disclose operations of selling, production, or use of pesticides by any person."

Section 29. Section 80-8-305, MCA, is amended to read:

"80-8-305. General violations. (1) It is consistent with the provisions of [sections 1 through 24], it is unlawful for any person:

(a) to discard any pesticide or pesticide container in such a manner as to cause injury to humans, domestic animals, or wildlife, or to pollute any waterway in a way harmful to any wildlife therein or to the environment;

(b) to handle, transport, store, display, or distribute pesticides or pesticide containers in such a manner as to endanger man or the environment or to endanger food or any other products that may be transported, stored, displayed, or distributed with such pesticides;

(c) to handle, apply, or attempt to apply any registered pesticide for which he does not have an appropriate, complete, or legible label at hand; or

(d) to apply or attempt to apply any registered pesticide in a manner inconsistent with the label, as defined in 80-8-102.

(2) It is unlawful for any person to manufacture,

formulate, or store any registered pesticide or component or byproduct thereof in such a manner that the pesticide or any component or byproduct cannot be contained or confined within the boundaries of the lands owned by or under the appropriate control of the person involved. Odor is specifically exempted from the provisions of this subsection."

NEW SECTION. Section 30. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 31. Codification instruction. [Sections 1 through 24] are intended to be codified as an integral part of Title 80, and the provisions of Title 80 apply to [sections 1 through 24].

NEW SECTION. Section 32. Effective date. [This act] is effective January 1, 1990.

-End-

1 HOUSE BILL NO. 757

2 INTRODUCED BY GIACOMETTO, WEEDING, BECK, O'KEEFE,
3 MARKS, HARPER, DEMARS, THOFT
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH AN
6 AGRICULTURAL CHEMICAL GROUND WATER PROTECTION PROGRAM TO BE
7 ADMINISTERED BY THE DEPARTMENT OF AGRICULTURE AND THE
8 DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES; TO REQUIRE
9 ESTABLISHMENT OF AGRICULTURAL CHEMICAL GROUND WATER QUALITY
10 STANDARDS; TO PROVIDE FOR GROUND WATER MONITORING AND
11 AGRICULTURAL CHEMICAL GROUND WATER MANAGEMENT PLANS; TO
12 PROVIDE FOR ENFORCEMENT AUTHORITY, COMPLIANCE ORDERS, AND
13 PENALTIES; TO DIRECT THE DEPARTMENT OF HEALTH AND
14 ENVIRONMENTAL SCIENCES TO AMEND CERTAIN RULES IMPLEMENTING
15 THE WATER QUALITY ACT; TO ESTABLISH ADDITIONAL FEES FOR
16 REGISTRATION OF PESTICIDES AND FERTILIZERS; TO CREATE
17 AGRICULTURAL CHEMICAL GROUND WATER PROTECTION ACCOUNTS;
18 AMENDING SECTIONS 75-5-105, 75-5-301, 80-8-105, 80-8-107,
19 AND 80-8-305, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

21 STATEMENT OF INTENT

22 A statement of intent is required for this bill in
23 order to provide guidance to the department of agriculture
24 and the department of health and environmental sciences
25 concerning the administration of the provisions of the bill

1 and the adoption of rules.

2 Because the departments share responsibility for
3 certain duties established by the bill, the departments
4 shall coordinate their rulemaking efforts and whenever
5 possible adopt identical rules for the areas of shared
6 responsibility, including:

7 (1) ground water monitoring as authorized by [sections
8 10 and 11];

9 (2) field and laboratory operational quality
10 assurance, quality control, and confirmatory procedures as
11 authorized by [sections 7, 10, and 11];

12 (3) maintenance of confidentiality of certain data as
13 required by [section 8]; and

14 (4) administrative civil penalties as authorized by
15 [section 22].

16 ~~in adopting rules pertaining to quality assurance,~~
17 ~~quality control, and confirmatory procedures, the~~
18 ~~departments shall include the following:~~

19 ~~(1) confirmation of analytical results by two~~
20 ~~different analytical methodologies if two methodologies~~
21 ~~exist; and~~

22 ~~(2) either resampling and analysis within 30 days of~~
23 ~~original sampling and analysis or splitting and analysis of~~
24 ~~samples by two or more laboratories approved by the~~
25 ~~department of agriculture and the department of health and~~

1 environmental sciences;

2 A--monitoring--program--implemented--by--the--department--of
3 agriculture--or--the--department--of--health--and--environmental
4 sciences--must--be--designed--to--enable--the--departments--to--make
5 the--following--determinations,--as--applicable,--whether:

6 {1}--the--agricultural--chemical--has--entered--ground--water
7 as--a--direct--result--of--use--according--to--its--label--or--as--a
8 result--of--misuse;

9 {2}--the--agricultural--chemical--has--a--reasonable
10 probability--of--entering--ground--water--due--to--migration
11 through--soil;

12 {3}--the--level--of--the--agricultural--chemical--in--the
13 ground--water--or--its--rate--of--migration--through--soil--is
14 increasing--or--decreasing--with--respect--to--standards--and
15 interim--numerical--standards--required--by--{section-9};

16 {4}--the--predictive--procedures--and--data--used--to
17 establish--the--monitoring--program--are--reliable;--and

18 {5}--the--ground--water--has--beneficial--human--or
19 environmental--uses--based--on--its--classification;

20 The--department--of--agriculture--or--the--department--of
21 health--and--environmental--sciences--shall--give--priority--to
22 developing--monitoring--programs--for--agricultural--chemicals
23 that--the--departments--identify--as--likely--to--enter--or--as
24 having--entered--ground--water--based--on--predictive--procedures
25 that--provide--a--high--degree--of--scientific--certainty--and--that

1 are--appropriate--to--the--geographical--areas--where--the
2 agricultural--chemicals--are--used;

3 if--the--department--of--health--and--environmental--sciences
4 finds--it--necessary--to--issue--compliance--orders--to--a--person--to
5 clean-up--ground--water--that--has--been--impaired--by--use--of
6 agricultural--chemicals--in--violation--of--Title-75,--chapter-5
7 or-6,--it--may,--based--on--technical--feasibility--and--economic
8 considerations,--order--the--ground--water--to--be--cleaned-up--to--a
9 level--that--is--lower--than--the--applicable--standard--or--interim
10 numerical--standard--if--the--following--findings--are--made:

11 {1}--the--agricultural--chemical--can--be--confined--to
12 either--the--source,--a--specific--property--boundary,--or--the
13 defined--area--extent--of--the--agricultural--chemical--plume;

14 {2}--the--ground--water--will--not--be--used--for--drinking
15 purposes--or--no--health--risks--will--exist--at--a--level--of--cleanup
16 that--is--lower--than--the--applicable--standard--or--interim
17 numerical--standard;

18 {3}--the--agricultural--chemical--will--not--cause--other
19 ground--water--impairment;--and

20 {4}--the--responsible--party--has--agreed--to--comply--with--an
21 existing--agricultural--chemical--ground--water--management--plan
22 or--a--plan--under--development--but--not--finalized--by--rule--at--the
23 time--of--the--determination--by--the--department--of--health--and
24 environmental--sciences;

25 The board of health and environmental sciences is

1 responsible for adoption of certain ground water quality
 2 standards for agricultural chemicals as required by [section
 3 9]. The board shall adopt appropriate rules as necessary to
 4 comply with the special requirements and considerations that
 5 apply to the adoption of these standards as specified in
 6 [section 9], including acquisition of current and
 7 scientifically valid data from the United States
 8 environmental protection agency (EPA) and other sources and
 9 communications with EPA concerning the content and status of
 10 promulgated federal standards, nonpromulgated federal
 11 standards, and other relevant EPA regulations and materials.

12 ~~In--adopting--rules--to--regulate--the--adoption--of--interim~~
 13 ~~numerical--standards,--the--board--shall--include--the--following~~
 14 ~~criteria:~~

15 ~~{1}--use--of--any--significant--new--and--relevant--technical~~
 16 ~~information;~~

17 ~~{2}--reliance--on--valid--scientific--methodologies,~~
 18 ~~protocols,--and--procedures;~~

19 ~~{3}--priority--consideration--of--information--and--evidence~~
 20 ~~that--has--been--subjected--to--peer--review,--has--resulted--from~~
 21 ~~more--than--one--study,--and--is--consistent--with--other--credible~~
 22 ~~medical--or--toxicological--evidence,--and~~

23 ~~{4}--consultation--with--the--department--of--agriculture~~
 24 ~~and--EPA--regarding--any--assessments--or--conclusions--EPA--may~~
 25 ~~have--made--relative--to--available--toxicological--information--on~~

1 ~~the--agricultural--chemical--in--question,~~

2 ~~The--department--of--health--and--environmental--sciences--and~~
 3 ~~the--department--of--agriculture--shall--cooperatively--ensure~~
 4 ~~appropriate--and--timely--notice--to--affected--parties,--including~~
 5 ~~the--registrant--of--an--agricultural--chemical,--concerning--the~~
 6 ~~adoption--of--standards--and--interim--numerical--standards;~~

7 The department of agriculture is responsible for the
 8 development of agricultural chemical ground water management
 9 plans. The department shall adopt appropriate rules to
 10 ensure compliance with the requirements of [section 12],
 11 including procedures for the development of the plans,
 12 communication with sources of information needed for the
 13 plans, communication with citizens who may be affected by
 14 the plans, and criteria for ensuring that the content of the
 15 plans meets the objectives of preventing ground water
 16 impairment, minimizing the presence of agricultural
 17 chemicals in ground water, and protecting present and future
 18 beneficial uses of ground water as specified in [section
 19 12]. The department of agriculture shall also adopt rules
 20 specifying procedures for obtaining comments on agricultural
 21 chemical ground water management plans from the department
 22 of health and environmental sciences, for adoption of
 23 completed plans, and for making modifications to adopted
 24 plans.
 25

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1 through 24] may be cited as the "Montana Agricultural Chemical Ground Water Protection Act".

NEW SECTION. Section 2. Definitions. Unless the context requires otherwise, in [sections 1 through 24] the following definitions apply:

(1) "Agricultural chemical" means any of the following:

(a) a pesticide as defined in 80-8-102;
(b) an isomer, degradation, or metabolic product of a pesticide; or

(c) a commercial fertilizer as defined in 80-10-101.

(2) "AQUIFER" MEANS A WATER-BEARING, SUBSURFACE FORMATION CAPABLE OF YIELDING SUFFICIENT QUANTITIES OF WATER TO A WELL FOR A BENEFICIAL USE.

(3) (3) "Best management plans" and "best management practices" mean activities, procedures, and practices established by the department of agriculture, in consultation with the Montana state university extension service, to prevent or remedy the introduction of agricultural chemicals into ground water to the extent technically and economically practical.

(3) (4) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(4) (5) "Confirmatory procedure" means a process for verifying the detection of agricultural chemicals in water, soil, and other related media.

(5) (6) "EPA" means the United States environmental protection agency.

(6) (7) "Ground water" means any water of the state occupying the voids within a geologic formation and within the zone of saturation capable--of--yielding--sufficient quantities-of-water-to-a-well-for-beneficial-use.

(7) --"Ground--water--impairment"--means--the--alteration--of the--physical,--chemical,--or--biological--properties--of--ground water--by--an--agricultural--chemical,--whether--from--discharge, use,--or--introduction,--that--prevents--or--is--likely--to--prevent the--present--or--future--beneficial--use--of--the--ground--water--as expressed--by--the--ground--water's--classification.

(8) (7) (8) "Interim numerical standard" means a health-based number that expresses the concentration of an agricultural chemical allowed in ground water and that is adopted by a rule of the board pursuant to (section 9(5) 9(3) or (6) (4)).

(9) (8) (9) "Margin of safety" means numerical margins that are applied to the no observable effect level in an agricultural chemical toxicology study and that are used by the EPA to extrapolate data obtained from studies of animals to humans, including sensitive individuals.

1 ~~{10}{9}(10)~~ "No observable effect level" means the
 2 highest dose level of an agricultural chemical to which a
 3 laboratory animal is exposed, per unit of body weight, at
 4 which no effect is observed, as established by EPA's
 5 pesticide registration process.

6 ~~{11}{10}(11)~~ "Nonpoint source" means a diffuse source
 7 of agricultural chemicals resulting from activities of man
 8 over a relatively large area, the effects of which must
 9 normally be addressed or controlled by a management or
 10 conservation practice.

11 ~~{12}{11}(12)~~ "Nonpromulgated federal standard" means a
 12 health advisory, OR A suggested no observable-effect ADVERSE
 13 RESPONSE level, ~~--suggested--maximum--contaminant--level,--or~~
 14 ~~suggested--ground--water--residue--guidance--level~~ that is
 15 published but not promulgated by regulation by EPA and that
 16 is a suggested measure of the health risk represented by the
 17 concentration of an agricultural chemical in water.

18 ~~{13}{12}(13)~~ "Numerical risk assessment" means a
 19 scientific procedure used to measure the statistical
 20 probability of human health risk associated with exposure to
 21 an agricultural chemical.

22 ~~{14}{13}(14)~~ "Oncogenic potential" means the potential
 23 of an agricultural chemical to cause tumors in laboratory
 24 animals and the extrapolation of that potential to humans
 25 through use of statistical models and other evidence.

1 ~~{15}{14}(15)~~ "Person" means any individual, group,
 2 firm, cooperative, corporation, association, partnership,
 3 political subdivision, state or federal government agency,
 4 or other organization or entity.

5 ~~{16}{15}(16)~~ "Point of standards application" means the
 6 specific location in an ~~acquirer~~ AQUIFER where ground water
 7 quality and quantity are sampled, measured, evaluated, or
 8 otherwise used by either the department or the department of
 9 health and environmental sciences to implement the
 10 provisions of [sections 1 through 24].

11 ~~{17}{16}(17)~~ "Point source" means a point source as
 12 defined in 75-5-103, including but not limited to chemical
 13 mixing, loading, and storage sites and sites of agricultural
 14 chemical spills.

15 ~~{18}{17}(18)~~ "Promulgated federal standard" means an
 16 agricultural chemical maximum contaminant level as
 17 established under the federal Safe Drinking Water Act, a
 18 national primary drinking water standard, or an interim
 19 drinking water regulation or other EPA regulation based on
 20 federal law.

21 ~~{19}{18}(19)~~ "Registrant" means a person as defined in
 22 80-8-102 and 80-10-101.

23 ~~{20}{19}(20)~~ "Standard" means the numerical value
 24 expressing the concentration of an agricultural chemical in
 25 ground water that, WHEN EXCEEDED, presents a POTENTIAL human

1 health risk over a lifetime of consumption and that is
2 adopted by a rule of the board as required by [section 9].

3 ~~(21)~~~~(20)~~(21) "Use" means any act of handling or release
4 of an agricultural chemical or exposure of man or the
5 environment to an agricultural chemical, including but not
6 limited to application, mixing, loading, storage, disposal,
7 or transportation.

8 NEW SECTION. Section 3. Policy. It is the public
9 policy of this state to:

10 (1) protect ground water and the environment from
11 impairment or degradation due to the use of agricultural
12 chemicals;

13 (2) allow for the proper and correct use of
14 agricultural chemicals ~~that are valuable and necessary for~~
15 ~~agricultural production and disease control;~~

16 (3) provide for the management of agricultural
17 chemicals to prevent, minimize, and mitigate their presence
18 in ground water, ~~considering the use of the ground water,~~
19 ~~and to provide special protection to high priority and~~
20 ~~highly susceptible ground water; and~~

21 (4) provide for education and training of agricultural
22 chemical applicators and the general public on ground water
23 protection, and agricultural chemical use, AND THE USE OF
24 ALTERNATIVE AGRICULTURAL METHODS.

25 NEW SECTION. Section 4. Administration. (1) The

1 department and the department of health and environmental
2 sciences shall administer [sections 1 through 24].

3 (2) The department of health and environmental
4 sciences is responsible for the establishment and
5 enforcement of agricultural chemical ground water standards
6 and interim numerical standards as authorized by [section
7 9], ground water monitoring as authorized by [sections 10
8 and 11], providing comments to the department during the
9 development of agricultural chemical ground water management
10 plans, ~~conducting~~ PROMOTING research as set forth in
11 [section 7], and related responsibilities set forth in Title
12 75, chapter 5.

13 (3) The department is responsible for the preparation,
14 implementation, and enforcement of agricultural chemical
15 ground water management plans as authorized by [sections 12
16 and 16 through 24], public education as authorized by
17 [section 6], ground water monitoring as authorized by
18 [sections 10 and 11], other duties related to promoting
19 research as set forth in [section 7], and related
20 responsibilities set forth in Title 80, chapters 8 and 10.

21 (4) [Sections 1 through 24] do not limit the
22 department's responsibility to enforce agricultural chemical
23 label directions and prohibitions.

24 (5) The administration of [sections 1 through 24],
25 including rulemaking and hearing functions authorized by

1 [sections 1 through 24], must be conducted in accordance
 2 with the Montana Administrative Procedure Act, Title 2,
 3 chapter 4.

4 **NEW SECTION. Section 5. Rulemaking.** (1) The board
 5 shall adopt rules for the administration of [sections 1
 6 through 24] for which the board and the department of health
 7 and environmental sciences have responsibility. These rules
 8 must include but are not limited to:

9 (a) standards and interim numerical standards for
 10 agricultural chemicals in ground water as authorized by
 11 [section 9];

12 (b) procedures for ground water monitoring as
 13 authorized by [sections 10 and 11];

14 (c) field and laboratory operational quality
 15 assurance, quality control, and confirmatory procedures as
 16 authorized by [sections 7, 10, and 11], which may include,
 17 through adoption by reference, procedures that have been
 18 established or approved by EPA for quality assurance and
 19 quality control;

20 (d) standards for maintaining the confidentiality of
 21 data and information declared confidential by EPA and the
 22 confidentiality of chemical registrant data and information
 23 protected from disclosure by federal or state law as
 24 required by [section 8]; and

25 (e) administrative civil penalties as authorized by

1 [section 22].

2 (2) The department shall adopt rules necessary to
 3 carry out its responsibilities under [sections 1 through
 4 24]. These rules must include but are not limited to:

5 (a) procedures for ground water monitoring as
 6 authorized by [sections 10 and 11];

7 (b) the content and procedures for development of
 8 agricultural chemical ground water management plans,
 9 including the content of best management practices and best
 10 management plans, procedures for obtaining comments from the
 11 department of health and environmental sciences on the
 12 plans, and the adoption of completed plans and plan
 13 modifications as authorized by [section 12];

14 (c) standards for maintaining the confidentiality of
 15 data and information declared confidential by EPA and of
 16 chemical registrant data and information protected from
 17 disclosure by federal or state law as required by [section
 18 8];

19 (d) field and laboratory operational quality
 20 assurance, quality control, and confirmatory procedures as
 21 authorized by [sections 7, 10, and 11], which may include,
 22 through adoption by reference, procedures that have been
 23 established or approved by EPA for quality assurance and
 24 quality control;

25 (e) emergency procedures as authorized by [section

1 20];

2 (f) procedures for issuance of compliance orders as
3 authorized by [section 18]; and

4 (g) procedures for the assessment of administrative
5 civil penalties as authorized by [section 22].

6 NEW SECTION. Section 6. Educational programs. (1) The
7 department, in cooperation with the Montana state university
8 extension service, shall develop and conduct appropriate
9 educational programs to promote the policy specified in
10 [section 3]. The department and the Montana state
11 university extension service may charge a fee for the
12 educational programs commensurate with the costs of program
13 development and administration.

14 (2) All fees collected by the department pursuant to
15 this section must be deposited in the state special revenue
16 fund. The department may spend the funds for the purposes
17 set forth in this section.

18 (3) All fees collected by the Montana state university
19 extension service must be deposited in a special account
20 identified for this purpose. The extension service may spend
21 the funds for the purposes set forth in this section.

22 NEW SECTION. Section 7. Research. The department or
23 the department of health and environmental sciences may
24 SHALL promote, for the purposes described in [section 3],
25 cooperative ground water research programs with units of the

1 university system and associated agricultural experiment
2 stations, the bureau of mines and geology, and other
3 appropriate agencies, organizations, and individuals.

4 NEW SECTION. Section 8. Confidentiality. (1) The
5 department and the department of health and environmental
6 sciences shall maintain the confidentiality of data declared
7 confidential by EPA and chemical registrant data and
8 information protected from disclosure by federal or state
9 law.

10 (2) The department of health and environmental
11 sciences shall comply with the requirements of 75-5-105 and
12 the department shall comply with the requirements of
13 80-8-107 and 80-10-210, except as otherwise provided by this
14 section.

15 NEW SECTION. Section 9. Ground water standards. (1)
16 The board shall adopt standards and, as applicable, interim
17 numerical standards for agricultural chemicals in ground
18 water. The standards must be the same as any promulgated or
19 nonpromulgated federal standard established by EPA, although
20 the board may determine, pursuant to the requirements of
21 subsection {7} (4), that an interim numerical standard
22 different from either a promulgated or nonpromulgated
23 federal standard is justified. PROMULGATED FEDERAL
24 STANDARDS MUST RECEIVE PREFERENCE. Except as provided in
25 subsection-{7} SUBSECTIONS (3) AND (4), if more than one

1 nonpromulgated federal standard exists for an agricultural
2 chemical, the board must adopt the most recently established
3 nonpromulgated federal standard.

4 (2) The board is not required to adopt a standard or
5 interim numerical standard for every agricultural chemical
6 * registered in the state. The only standards and interim
7 numerical standards required are for those agricultural
8 chemicals:

9 (a) that are addressed by promulgated and
10 nonpromulgated federal standards;

11 (b) the presence of which has been verified in ground
12 water as provided in [section 10]; or

13 (c) that the department and the department of health
14 and environmental sciences predict may appear in ground
15 water, in accordance with the procedures and determinations
16 specified in [sections 10 and 11].

17 ~~{3}--Before--either--the--department--or--the--department--of~~
18 ~~health--and--environmental--sciences---provides---monitoring~~
19 ~~results--or--before--either--may--order--a--person--to--conduct~~
20 ~~monitoring--and--prior--to--the--department--taking--an--enforcement~~
21 ~~action--under--{sections--1--through--24}--or--the--department--of~~
22 ~~health--and--environmental--sciences--taking--an--enforcement~~
23 ~~action--under--Title--757--chapter--5--the--board--must--have~~
24 ~~established--a--standard--or--interim--numerical--standard--for--the~~
25 ~~agricultural--chemical--in--question--except--in--emergency~~

1 ~~situations--as--specified--in--{section--20}--and--75-5-621,--as~~
2 ~~applicable:~~

3 ~~{4}--The--department--may--not--develop--and--implement--an~~
4 ~~agricultural--chemical--ground--water--management--plan--for--a~~
5 ~~particular--agricultural--chemical--in--accordance--with--{section~~
6 ~~12}--until--a--standard--or--interim--numerical--standard--for--that~~
7 ~~chemical--has--been--established--by--the--board--or--until--EPA~~
8 ~~requires--the--development--of--an--agricultural--chemical--ground~~
9 ~~water--management--plan;~~

10 ~~{5}{3}~~ If no promulgated federal standard has been
11 adopted and OR no nonpromulgated federal standard has been
12 published for an agricultural chemical for which the board
13 is required to establish a standard or interim numerical
14 standard as specified in subsections (2)(b) and (2)(c), the
15 department of health and environmental sciences shall
16 request EPA to establish a promulgated or nonpromulgated
17 federal standard. If the department of health and
18 environmental sciences determines that EPA cannot comply
19 with the request within 60 15 days, the board shall adopt an
20 interim numerical standard, provided that the board shall
21 review the interim numerical standard whenever EPA adopts a
22 promulgated federal standard or publishes a nonpromulgated
23 federal standard for the agricultural chemical in question.

24 ~~{6}{4}~~ The board may adopt an interim numerical
25 standard that is different from either a promulgated or

1 nonpromulgated federal standard, if there is significant new
2 and relevant technical information available that is
3 scientifically valid ~~and that has not been considered by~~
4 EPA. The board shall review the interim numerical standard
5 when EPA ESTABLISHES OR revises the promulgated or
6 nonpromulgated federal standard for the agricultural
7 chemical in question.

8 ~~{7}{5} In addition to criteria the board considers~~
9 ~~pursuant to rules adopted under {section 5} for the adoption~~
10 ~~of standards, the~~ THE board shall ~~base~~ CONSIDER THE
11 FOLLOWING IN ADOPTING any interim numerical standard ~~it~~
12 adopts under either subsection ~~{5} or {6}~~ {3} OR {4}:

13 (a) EFFECTS ON a person weighing 70 kilograms and
14 drinking 2 liters of water per day over a lifetime; and

15 (b) EPA's conclusions regarding the no observable
16 effect level, including the margin of safety identified by
17 EPA when scientific data indicates oncogenic potential for
18 the agricultural chemical and EPA has determined that a
19 numerical risk assessment is not justified, is
20 inappropriate, or does not serve as the primary
21 toxicological basis for regulation.

22 ~~{8}{6}~~ Nothing in this section may interfere with the
23 board's responsibility to adopt rules and standards under
24 Title 75, chapter 6.

25 NEW SECTION. Section 10. Monitoring programs. (1) The

1 department or the department of health and environmental
2 sciences may SHALL conduct monitoring programs to determine:

3 (a) whether residues of agricultural chemicals are
4 present in ground water; and

5 (b) the likelihood of an agricultural chemical
6 entering TO ENTER ground water, if either department
7 determines that sufficient valid scientific data is
8 available to reasonably predict the behavior of a particular
9 agricultural chemical in the soil and ground water.

10 {2} ANY PERSON WHO RECEIVES A CHEMICAL ANALYSIS
11 INDICATING THE PRESENCE OF AN AGRICULTURAL CHEMICAL IN
12 GROUND WATER SHALL NOTIFY THE DEPARTMENT OF HEALTH AND
13 ENVIRONMENTAL SCIENCES.

14 ~~{2}{3}~~ The department and the department of health and
15 environmental sciences shall evaluate all information
16 relating to this section that is received from any person
17 based upon standard procedures, protocols, and confirmatory
18 procedures established by rules. Information found to be
19 insufficient based on the adopted procedures and protocols,
20 including analytical results, may be used only for
21 informational purposes.

22 NEW SECTION. Section 11. Evaluation and use of
23 monitoring results. (1) When providing preliminary
24 monitoring results ~~to ground water users~~ or confirmed
25 monitoring results to the GROUND WATER users or the public,

1 the departments shall also provide the ANY applicable
2 standard or interim numerical standard.

3 (2) When monitoring results reveal the presence of an
4 agricultural chemical in ground water:

5 (a) the department of health and environmental
6 sciences is the lead department for determining health
7 risks; and

8 (b) the department is the lead department for
9 determining compliance with agricultural chemical ground
10 water management plans authorized by [section 12] and with
11 agricultural chemical registration, use, and labeling
12 requirements and conditions pursuant to Title 80, chapters 8
13 and 10.

14 (3) The department and the department of health and
15 environmental sciences shall cooperatively evaluate the
16 results of monitoring programs authorized by [section 10] to
17 determine, as applicable:

18 (a) whether the presence of an agricultural chemical
19 in ground water meets or exceeds:

20 (i) an established standard or interim numerical
21 standard at a point of standards application; or

22 (ii) any requirements associated with the
23 classification of the ground water;

24 (b) whether the conditions required by a specific
25 agricultural chemical ground water management plan as set

1 forth in [section 12] are appropriate or have been violated;

2 (c) the geographical or hydrogeological extent of the
3 agricultural chemical in the ground water; and

4 (d) whether there is a definite trend of increased
5 presence of the agricultural chemical in ground water based
6 on the percentage of change in concentrations measured at a
7 single monitoring site or at different monitoring sites over
8 a reasonable period of time.

9 (4) Based on the results of monitoring, the department
10 and the department of health and environmental sciences
11 shall implement appropriate actions specified in [sections 1
12 through 24] to mitigate any existing impacts of an
13 agricultural chemical found in ground water and to prevent
14 future impacts of an agricultural chemical that may be found
15 in ground water, in relation to human health, agriculture,
16 and the environment.

17 (5) The department may not undertake compliance and
18 enforcement actions authorized by [sections 1 through 24]
19 and the department of health and environmental sciences may
20 not undertake compliance and enforcement actions authorized
21 by Title 75, chapter 5, unless there is sufficient evidence
22 collected through:

23 (a) monitoring at a point of standards application or
24 through THAT REVEALS THAT A PERSON USING AN AGRICULTURAL
25 CHEMICAL OR INTRODUCING OR DISCHARGING THE CHEMICAL INTO

1 GROUND WATER HAS VIOLATED A PROVISION OF [SECTION 17] OR
 2 TITLE 75, CHAPTER 5; OR

3 [B] other investigations that reveal that a person
 4 using an agricultural chemical or introducing or discharging
 5 the chemical into ground water has violated a provision of
 6 [section 17] or Title 75, chapter 5; or

7 {b}{C} monitoring that reveals a significant
 8 probability for an agricultural chemical to enter ground
 9 water.

10 ~~{6}--Any actions taken by the departments in accordance~~
 11 ~~with subsections {4} and {5} must be consistent with the~~
 12 ~~priority accorded to and the beneficial use of the ground~~
 13 ~~water as expressed by its classification. The type and~~
 14 ~~complexity of the departments' actions may be more~~
 15 ~~comprehensive in situations involving higher ground water~~
 16 ~~classifications. Actions involving the lowest ground water~~
 17 ~~classification may be limited to minimizing further impact~~
 18 ~~unless the departments jointly determine that the lowest~~
 19 ~~classified ground water will impair or is likely to impair~~
 20 ~~other state waters that have a higher classification.~~

21 NEW SECTION. Section 12. Agricultural chemical ground
 22 water management plans. (1) The department may SHALL develop
 23 and implement a general state agricultural chemical ground
 24 water management plan TO ACHIEVE THE POLICIES OF [SECTION
 25 3]. This plan may MUST include general program elements set

1 forth in [sections 1 through 24] and best management plans
 2 and best management practices. PRIOR TO PUBLICATION OF THE
 3 PLAN, THE DEPARTMENT SHALL PROVIDE A 30-DAY PERIOD FOR THE
 4 DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO PREPARE
 5 AND SUBMIT COMMENTS ON THE PLAN.

6 (2) Except as provided in subsection ~~{10}~~ (11), the
 7 department shall develop and implement agricultural chemical
 8 ground water management plans specific to particular
 9 agricultural chemicals and to a defined geographical area.
 10 ~~Within available resources, the department shall prioritize~~
 11 ~~preparation of specific agricultural chemical ground water~~
 12 ~~management plans based on the following criteria:~~

13 (a) when the level of an agricultural chemical found
 14 in ground water is at 50% of the standard or interim
 15 numerical standard at a point of standards application and
 16 is scientifically validated;

17 (b) when a definite trend of increased presence of the
 18 agricultural chemical in ground water at a point of
 19 standards application is scientifically validated;

20 (C) WHEN AGRICULTURAL CHEMICALS HAVE BEEN DETERMINED
 21 TO HAVE MIGRATED INTO IN THE GROUND WATER FROM THE POINT OF
 22 DETECTION;

23 ~~{c}{D}~~ when EPA proposes to suspend or cancel
 24 registration of an agricultural chemical, prohibits or
 25 restricts the chemical's sale or use in the state, or

otherwise initiates action against a chemical because of ground water concerns and when EPA's action, restriction, or prohibition will be implemented unless the state develops an adequate management plan; or

(d)(E) when agricultural chemicals that possess or are suspected of possessing properties that indicate potential to migrate to ground water are being applied on areas underlaid by ground water that is vulnerable to impairment.

(3) ANY PERSON USING AN AGRICULTURAL CHEMICAL THAT IS ADDRESSED BY A SPECIFIC AGRICULTURAL CHEMICAL GROUND WATER MANAGEMENT PLAN IN THE GEOGRAPHICAL REGION THAT IS ADDRESSED BY THE PLAN SHALL COMPLY WITH THE PLAN. The department may SPECIFICALLY identify and designate persons using--an agricultural--chemical--that--is--addressed--by--a--specific agricultural--chemical--ground-water-management--plan--in--the geographical--area--that--is--addressed--by--the--plan--Designated persons--shall--comply--with--the--plan-- WHO ARE UNDER THE PLAN AND MAY INFORM ANY PERSON ABOUT THE PLAN.

(4) THE DEPARTMENT SHALL PRIORITIZE PREPARATION OF SPECIFIC AGRICULTURAL CHEMICAL GROUND WATER MANAGEMENT PLANS IN CONSIDERATION OF THE SPECIFIC CIRCUMSTANCES OF EACH AREA AND WITHIN AVAILABLE RESOURCES.

(4)(5) In developing general and specific agricultural chemical ground water management plans, the department shall consider the current and potential beneficial use of the

ground water included in or affected by the plans as ~~expressed--by-the-classification-of-the-ground-water.~~ If the ground water has not been classified, the department shall consider it to be included in the classification representing the highest quality of ground water until such time as the ground water is classified by the board DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES, and the department may proceed to develop an agricultural chemical ground water management plan as required by subsection (2).

(5)(6) The department may request the board DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES to classify certain ground water and may collect the data and information required by the board DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES to classify the ground water. If adequate technical data and financial resources are available as determined by the board DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES, the board DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES shall classify ground water at locations as requested by the department.

(6)(7) A specific agricultural chemical ground water management plan must include:

(a) requirements to prevent ground water impairment that are based on ground water use, value, and vulnerability and that address all applicable aspects of agricultural chemical use; and

1 (b) requirements to prevent or minimize further
2 presence of the agricultural chemical in the ground water
3 and to provide protection for the present and future
4 beneficial use of the ground water.

5 ~~(7)~~(8) A specific agricultural chemical ground water
6 management plan may include but is not limited to the
7 following elements:

8 (a) identification of geographical areas where an
9 agricultural chemical may be used;

10 (b) ground water, soil, meteorological, and geological
11 characteristics;

12 (c) best management plans and best management
13 practices;

14 (d) identification of high priority ground water;

15 (e) certification, licensing, training, and education
16 requirements for persons using agricultural chemicals;

17 (f) identification of setback areas around water wells
18 where certain activities may be restricted;

19 (g) agricultural chemical application rates and timing
20 and related use criteria;

21 (h) alternative pest management techniques, including
22 integrated pest management;

23 (i) other requirements for pesticides, as set forth in
24 Title 80, chapter 8, and related rules and for fertilizers,
25 as set forth in Title 80, chapter 10, and related rules; and

1 (j) EPA requirements; AND

2 (K) ALTERNATIVE SOIL FERTILITY PRACTICES.

3 ~~(8)~~(9) When developing and implementing a specific
4 agricultural chemical ground water management plan, the
5 department shall consider the ~~beneficial-uses~~ BENEFITS OF
6 APPROPRIATE USE of the agricultural chemical and shall
7 consult with the Montana state university extension service.

8 ~~(9)~~(10) Within available resources, the department
9 shall contact users of an agricultural chemical and user
10 groups that will be subject to a general or specific
11 agricultural chemical ground water management plan to
12 request their recommendations concerning the development of
13 the plan.

14 ~~(10)~~(11) The department ~~is-not-required-to~~ MAY develop
15 or AND implement a commercial fertilizer ground water
16 management plan ~~until-EPA-implements-a-program-to-protect~~
17 ~~ground-water-from-fertilizers--Prior-to-the-department~~
18 ~~implementing--an--agricultural--chemical--ground--water~~
19 ~~management-plan-for-a-commercial-fertilizer--the-department~~
20 ~~and-the-department-of-health-and-environmental-sciences~~
21 ~~shall-determine-the-source-of-the-nitrate-or-other-component~~
22 ~~of-fertilizer-present-in-ground-water--if-the-source-is-not~~
23 ~~from-the-use-of-a-commercial-fertilizer--the-department-may~~
24 ~~not-implement-this-section~~ IF THE DEPARTMENT AND THE
25 DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES DETERMINE

1 THAT RESIDUES FROM COMMERCIAL FERTILIZER ARE PRESENT IN THE
 2 GROUND WATER OR WHEN EPA IMPLEMENTS A PROGRAM TO PROTECT
 3 GROUND WATER FROM FERTILIZERS.

4 ~~{11}~~(12) The department shall adopt specific
 5 agricultural chemical ground water management plans through
 6 rulemaking, provided that the department may implement
 7 emergency plans as set forth in 80-8-105(4) or as authorized
 8 by the Montana Administrative Procedure Act. Prior to
 9 rulemaking, the department shall provide to the department
 10 of health and environmental sciences a copy of each proposed
 11 specific agricultural chemical ground water management plan.
 12 A 30-day period must be provided for the department of
 13 health and environmental sciences to prepare comments on the
 14 plan.

15 ~~{12}~~(13) The department shall review agricultural
 16 chemical ground water management plans periodically to
 17 determine if the requirements contained in the plans need to
 18 be modified based on new scientific data and information.
 19 Plan modifications must be accomplished by rulemaking.

20 (14) A PERSON WHO SELLS AGRICULTURAL LAND THAT IS
 21 SUBJECT TO THE PROVISIONS OF A SPECIFIC AGRICULTURAL
 22 CHEMICAL GROUND WATER MANAGEMENT PLAN SHALL PROVIDE THE
 23 BUYER WITH WRITTEN NOTICE ABOUT HIS OBLIGATIONS UNDER THE
 24 PLAN AND SHALL FORWARD A COPY OF THE NOTICE TO THE
 25 DEPARTMENT. THE DEPARTMENT IS NOT RESPONSIBLE FOR

1 ENFORCEMENT OF THIS SUBSECTION.

2 NEW SECTION. Section 13. Department of health and
 3 environmental sciences to amend rules. The department of
 4 health and environmental sciences shall amend Rules
 5 16.20.603, 16.20.1003, 16.20.1011, and 16.20.1012,
 6 Administrative Rules of Montana, to define A SPECIFIC
 7 AGRICULTURAL CHEMICAL GROUND WATER MANAGEMENT PLAN PREPARED
 8 PURSUANT TO [SECTION 12] AS reasonable land, soil, and water
 9 conservation practices ~~to include~~ FOR point and nonpoint
 10 source agricultural operations involving the use of
 11 agricultural chemicals ~~that are conducted in compliance with~~
 12 ~~specific agricultural chemical ground water management plans~~
 13 ~~prepared pursuant to--{section--12}~~ and to exclude those
 14 agricultural operations from Montana ground water pollution
 15 control system permit requirements.

16 NEW SECTION. Section 14. Agricultural chemical ground
 17 water protection accounts -- acceptance and expenditure of
 18 gifts, grants, and funds. (1) There is a department of
 19 agriculture agricultural chemical ground water protection
 20 special revenue account and a department of health and
 21 environmental sciences agricultural chemical ground water
 22 protection special revenue account within the state special
 23 revenue fund established by 17-2-102.

24 (2) Both accounts named in subsection (1) may receive
 25 funds from any source as gifts, grants, cost-share funds, or

1 other funds designated for agricultural chemical ground
2 water protection purposes.

3 (3) The department and the department of health and
4 environmental sciences may individually or jointly spend
5 funds received by their respective accounts for the purposes
6 authorized by [sections 1 through 24].

7 NEW SECTION. Section 15. Special funding. (1) A fee
8 of \$15 is assessed for the registration of pesticides in
9 addition to the fee imposed by 80-8-201(4).

10 (2) A fee of \$10 is assessed for the registration of
11 fertilizers in addition to the fee imposed by 80-10-201(1).
12 The additional fee must be used for the ground water
13 protection responsibilities of the department relating to
14 fertilizers. Revenues collected from this fee must be
15 credited to the commercial fertilizer account within the
16 state special revenue fund for the administration of
17 [sections 1 through 24].

18 NEW SECTION. Section 16. Authority to investigate and
19 inspect. Authorized representatives of the department,
20 consistent with the responsibilities set forth in [sections
21 1 through 24] and upon presentation of department-issued
22 credentials, may at reasonable times or under emergency
23 conditions enter upon any public or private property to:

24 (1) investigate conditions relating to compliance with
25 agricultural chemical labels, agricultural chemical ground

1 water management plans, monitoring requirements, or ground
2 water protection requirements and to investigate violations
3 of plans or compliance orders;

4 (2) gain access to and copy any records required by
5 the department in the administration of [sections 1 through
6 24];

7 (3) establish and inspect monitoring equipment; and

8 (4) sample ground water, including drinking water
9 supply sources such as wells and similar structures.

10 NEW SECTION. Section 17. Prohibited activity. It is
11 unlawful for a person to:

12 ~~{1}--cause-ground-water-impairment-or-to-place-or-cause~~
13 ~~to-be-placed-any-agricultural-chemical-where-it-is-likely-to~~
14 ~~cause-ground-water-impairment;--except-when--the--use--of--an~~
15 ~~agricultural-chemical-was;~~

16 ~~{a}--in--accordance--with--label--directions;--including~~
17 ~~precautions-listed-with-those-directions;--or~~

18 ~~{b}--in--compliance--with---a---specific---agricultural~~
19 ~~chemical-ground-water-management-plan;~~

20 ~~{2}{1}~~ violate any provision of a specific
21 agricultural chemical ground water management plan;

22 ~~{3}{2}~~ violate any lawful order issued pursuant to
23 [sections 1 through 24]; or

24 ~~{4}{3}~~ violate any provision of [sections 1 through
25 24].

NEW SECTION. Section 18. Compliance orders. (1) In furtherance of [section 17], the department may issue a compliance order to any person violating a standard, an interim numerical standard, or any other requirement established pursuant to [sections 1 through 24]. The department shall coordinate its proposed actions pursuant to this section with proposed actions of the department of health and environmental sciences pursuant to 75-5-613, if any. Issuance of a compliance order under [sections 1 through 24] precludes the department from taking other enforcement actions for the same violation under Title 80, chapter 8 or 10.

(2) The department may issue a compliance order to any person, including the person's employees, agents, and subcontractors, whether or not the person is subject to a specific management plan, to require the cleanup of any agricultural chemical that the person has accidentally or purposely dumped, spilled, or misused or unlawfully used that has a significant probability of entering ground water.

(3) When issuing a compliance order, the department may require a person who has violated a provision of [section 17] to conduct monitoring to assist in determining the presence or level of concentration of an agricultural chemical in ground water and the effectiveness of cleanup efforts. The department shall specify criteria in the

compliance order for determining the duration of monitoring.

(4) A compliance order must specify the requirement violated and must set a time for compliance. In establishing a time for compliance, the department shall take into account the seriousness of the violation and any good-faith efforts that the person has made to comply with the requirement that has been violated. A compliance order issued under this section must be served either personally by a person qualified to perform service under the Montana Rules of Civil Procedure or by certified mail.

~~(5) A person may provide information to the department, including data concerning the person's economic situation. The department shall consider this information in determining the amount of the person's financial obligation for cleanup under this section.~~

NEW SECTION. Section 19. Injunctions authorized. The department may commence a civil action seeking appropriate relief, including a permanent or temporary injunction, pursuant to 80-8-306 or 80-10-303, as applicable, for a violation that is subject to a compliance order under [section 18].

NEW SECTION. Section 20. Emergencies. Notwithstanding any other provisions of [sections 1 through 24], if the department finds that an emergency exists that requires immediate action to protect ground water from agricultural

1 chemicals or to prevent use of ground water impaired or
 2 likely to be impaired by agricultural chemicals, the
 3 department may, without notice or hearing, issue necessary
 4 orders or adopt rules to protect public health, welfare, and
 5 safety. The duration of an emergency order or rule is
 6 limited to the emergency provisions of the Montana
 7 Administrative Procedure Act as specified in 2-4-303.

8 NEW SECTION. Section 21. violators subject to
 9 penalties. (1) A person found to be in violation of
 10 [sections 1 through 24] or a rule established pursuant to
 11 [sections 1 through 24] is subject to the penalty provisions
 12 of [sections 22 through 24].

13 (2) For the purpose of this section, the term "person"
 14 means, in addition to the definition in [section 2], any
 15 responsible corporate officer.

16 (3) Nothing in [sections 1 through 24] may be
 17 construed as requiring the department or an authorized agent
 18 of the department to report minor violations of [sections 1
 19 through 24] for prosecution when the department or a duly
 20 authorized agent believes that the public interest will be
 21 best served by other remedial action, by a suitable notice
 22 of warning in writing, or by a lawful written order.

23 (4) Action under [sections 22 through 24] does not bar
 24 the department from enforcement of [sections 1 through 24]
 25 or of rules or orders issued under [sections 1 through 24]

1 by injunction or other appropriate remedy.

2 (5) The department and the department of health and
 3 environmental sciences ~~may-not-both-subject-a-violator~~ SHALL
 4 COORDINATE ACTIONS WHEN A VIOLATOR IS SUBJECT to the
 5 penalties authorized by [sections 22 through 24] and
 6 penalties authorized by Title 75, chapter 5, for the same
 7 violation.

8 NEW SECTION. Section 22. Administrative civil
 9 penalty. (1) A person who commits a violation of [sections 1
 10 through 24] may be assessed an administrative civil penalty
 11 by either the department or the department of health and
 12 environmental sciences, consistent with their respective
 13 responsibilities, of not more than \$1,000 for each offense.
 14 Farm applicators possessing a pesticide permit or using a
 15 fertilizer may not be assessed an administrative civil
 16 penalty of more than \$500 for the first offense. Assessment
 17 of a civil penalty may be made in conjunction with any other
 18 warning, order, or administrative action authorized by
 19 [sections 1 through 24] or Title 75, chapter 5, that is
 20 issued or undertaken by either the department or the
 21 department of health and environmental sciences.

22 (2) No administrative civil penalty may be assessed
 23 unless the person charged is given notice and opportunity
 24 for a hearing pursuant to Title 2, chapter 4, part 6, of the
 25 Montana Administrative Procedure Act.

(3) In determining an appropriate administrative civil penalty, the responsible department shall consider the effect on the person's ability to continue in business, the gravity of the violation that occurred, the degree of care exercised by the offender, and whether significant harm resulted to public health, agricultural crops, livestock, or the environment.

(4) If the responsible department is unable to collect the administrative civil penalty or if a person fails to pay all or a set portion of the administrative civil penalty as determined by the responsible department, the department may seek to recover the amount in the appropriate district court.

(5) A person against whom the department or the department of health and environmental sciences has assessed an administrative civil penalty may, within 30 days of the final agency action making the assessment, appeal the assessment to the district court of the county in which the violation is alleged to have occurred. A jury trial must be granted when demanded under Rule 38 of the Montana Rules of Civil Procedure.

NEW SECTION. Section 23. Judicial civil penalty. A person who commits a violation as specified in [section 17] shall be subject to a judicial civil penalty not to exceed \$10,000. Each occurrence constitutes a separate violation.

NEW SECTION. Section 24. Criminal penalties. (1) A person who intentionally commits a violation as specified in [section 17] is guilty of an offense and subject to a fine not to exceed \$25,000 for each day the violation continues or imprisonment for not more than 1 year, or both. Following an initial conviction under this section, a subsequent conviction subjects a person to a fine of not more than \$50,000 for each day the violation continues or imprisonment for not more than 2 years, or both.

(2) Except as otherwise provided in [sections 1 through 24], a person convicted of violating any of the provisions of [sections 1 through 24] or rules issued under [sections 1 through 24] or who misrepresents, impedes, obstructs, hinders, or otherwise prevents or attempts to prevent the department from performance of its duties in connection with the provisions of [sections 1 through 24] is guilty of a misdemeanor and shall be fined not less than \$100 but not more than \$1,500.

(3) A person who knowingly makes any false statement, representation, or certification in any record, report, or other document filed or required to be maintained under [sections 1 through 24] or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under [sections 1 through 24] shall, upon conviction, be punished by a fine of not more

1 than \$5,000 or by imprisonment for not more than 6 months,
2 or both.

3 (4) A person who with intent to defraud uses or
4 reveals confidential information and data provided under
5 [sections 1 through 24] or rules issued under [sections 1
6 through 24] shall, upon conviction, be fined not more than
7 \$5,000 or imprisoned for not more than 1 year, or both.

8 **Section 25.** Section 75-5-105, MCA, is amended to read:

9 "75-5-105. Confidentiality of records. Any Except as
10 provided in [section 8], any information concerning sources
11 of pollution which is furnished to the board or department
12 or which is obtained by either of them is a matter of public
13 record and open to public use. However, any information
14 unique to the owner or operator of a source of pollution
15 which would, if disclosed, reveal methods or processes
16 entitled to protection as trade secrets shall be maintained
17 as confidential if so determined by a court of competent
18 jurisdiction. The owner or operator shall file a
19 declaratory judgment action to establish the existence of a
20 trade secret if he wishes such information to enjoy
21 confidential status. The department shall be served in any
22 such action and may intervene as a party therein. Any
23 information not intended to be public when submitted to the
24 board or department shall be submitted in writing and
25 clearly marked as confidential. The data describing physical

1 and chemical characteristics of a waste discharged to state
2 waters shall not be considered confidential. The board may
3 use any information in compiling or publishing analyses or
4 summaries relating to water pollution if such analyses or
5 summaries do not identify any owner or operator of a source
6 of pollution or reveal any information which is otherwise
7 made confidential by this section."

8 **Section 26.** Section 75-5-301, MCA, is amended to read:

9 "75-5-301. Classification and standards for state
10 waters. The Consistent with the provisions of [section 9],
11 the board shall:

12 (1) establish and modify the classification of all
13 waters in accordance with their present and future most
14 beneficial uses;

15 (2) formulate standards of water purity and
16 classification of water according to its most beneficial
17 uses, giving consideration to the economics of waste
18 treatment and prevention;

19 (3) review, from time to time at intervals of not more
20 than 3 years, established classifications of waters and
21 standards of water purity and classification."

22 **Section 27.** Section 80-8-105, MCA, is amended to read:

23 "80-8-105. Rules. (1) The department may adopt by
24 reference without a public hearing regulations adopted under
25 the Federal Insecticide, Fungicide, and Rodenticide Act, as

1 amended. The department may, after a public hearing, adopt
2 all rules necessary to carry out this chapter.

3 (2) The rules may prescribe methods of:

4 (a) registration, suspension or cancellation of
5 registration, application, use or restricting use,
6 prohibiting use, offering or exposing for sale of any
7 pesticide;

8 (b) determining whether pesticides are highly toxic to
9 man;

10 (c) determining standards of coloring or discoloring
11 for pesticides and subjecting pesticides to the requirements
12 of 80-8-202;

13 (d) licensing commercial applicators, operators, and
14 dealers, establishing methods of recordkeeping for
15 applicators, operators, and dealers, and providing for the
16 review of the records by the department's authorized agent
17 and the submission of the records to the department upon
18 written request;

19 (e) issuing farm applicator special-use permits and
20 the maintenance and submission of records by farm
21 applicators issued special-use permits;

22 (f) collection, examination, and standard deviation
23 from guarantee analysis and umpire analysis of pesticides
24 and devices;

25 (g) operating and maintaining equipment used by

1 applicators;

2 (h) developing examinations which shall be held
3 periodically throughout the state;

4 (i) establishing the form and content of all
5 applications for licenses and permits;

6 (j) designating pesticides that may be sold at retail
7 for home, yard, garden, and lawn use. The department may
8 also limit retail sale of pesticides, up to a specific
9 number of pounds or gallons and concentration which would be
10 sublethal to humans and animals if small amounts of it were
11 accidentally swallowed, inhaled, sprayed, or dusted on the
12 skin.

13 (k) revoking licenses and permits;

14 (l) registering or controlling any spray adjuvant,
15 such as a wetting agent, spreading agent, deposit builder,
16 adhesive, emulsifying agent, deflocculating agent, water
17 modifier, or similar agent with or without toxic properties
18 of its own intended to be used with any other pesticide as
19 an aid to the application or effect of that other pesticide,
20 whether or not distributed in a package or container
21 separate from that of a pesticide with which it is to be
22 used;

23 (m) registering pesticide-fertilizer and other
24 chemical blends or, instead of registration, establishing
25 licensing, inspection, and fees for blending plants;

1 (n) establishing registration procedures for devices,
 2 with a fee not to exceed \$5 per type of device, specifying
 3 classes of devices to be registered and providing for
 4 additional requirements;
 5 (o) imposing conditions for renewal of dealer,
 6 applicator, and operator licenses and permits, including
 7 regualification training;
 8 (p) establishing procedures for implementing and
 9 administering the civil penalties under 80-8-306; and
 10 (q) establishing fees for training courses and
 11 materials.
 12 (3) (a) Whenever Consistent with the provisions of
 13 [sections 1 through 24], whenever the department finds that
 14 those rules are necessary to carry out the purposes and
 15 intent of this chapter, the rules may relate to the time,
 16 place, manner, and method of registration, suspension or
 17 cancellation of registration, application, or selling of the
 18 pesticides, may restrict or prohibit use of pesticides in
 19 the state or in designated areas during specified periods of
 20 time, and shall encompass all reasonable factors which the
 21 department considers necessary to prevent damage or injury
 22 to:
 23 (i) persons, animals, crops, or pollinating insects
 24 from the effect of drift or careless application;
 25 (ii) the environment;

1 (iii) plants, including forage plants;
 2 (iv) wildlife;
 3 (v) fish and other aquatic life.
 4 (b) In issuing the rules, the department shall give
 5 consideration to pertinent research findings and
 6 recommendations of other agencies of this state or of the
 7 federal government.
 8 (4) If the department finds that an emergency exists
 9 which requires immediate action with regard to the
 10 registration, use, or application of pesticides, the
 11 department may, without notice or hearing, issue necessary
 12 orders or rules to protect the public health, welfare, and
 13 safety. An order or rule issued under this subsection is
 14 effective for the period prescribed by the Montana
 15 Administrative Procedure Act. If the department determines
 16 that the emergency order or rule should remain in effect, a
 17 public hearing under 80-8-106 shall be held within the above
 18 period to determine whether the order or rule should be
 19 adopted by the department.
 20 (5) All rules and orders issued by the department
 21 shall be in writing, shall be entered in full in books to be
 22 kept by the department for that purpose, shall be indexed,
 23 and shall be public records open for inspection at all times
 24 during reasonable office hours. Except for orders
 25 establishing or changing rules of practice and procedure,

all orders made and published by the department shall include and be based upon written findings of fact. A copy of any rule or order certified by the department shall be received in evidence in all courts of this state with the same effect as the original."

Section 28. Section 80-8-107, MCA, is amended to read:

"80-8-107. Public information. The Except as provided in [sections 1 through 24], the department as it deems proper may, alone or in cooperation with other state or federal agencies, publish information regarding aspects of the use and application sections or registration sections of this chapter. This information cannot disclose operations of selling, production, or use of pesticides by any person."

Section 29. Section 80-8-305, MCA, is amended to read:

"80-8-305. General violations. (1) It is consistent with the provisions of [sections 1 through 24], it is unlawful for any person:

(a) to discard any pesticide or pesticide container in such a manner as to cause injury to humans, domestic animals, or wildlife, or to pollute any waterway in a way harmful to any wildlife therein or to the environment;

(b) to handle, transport, store, display, or distribute pesticides or pesticide containers in such a manner as to endanger man or the environment or to endanger food or any other products that may be transported, stored,

displayed, or distributed with such pesticides;

(c) to handle, apply, or attempt to apply any registered pesticide for which he does not have an appropriate, complete, or legible label at hand; or

(d) to apply or attempt to apply any registered pesticide in a manner inconsistent with the label, as defined in 80-8-102.

(2) It is unlawful for any person to manufacture, formulate, or store any registered pesticide or component or byproduct thereof in such a manner that the pesticide or any component or byproduct cannot be contained or confined within the boundaries of the lands owned by or under the appropriate control of the person involved. Odor is specifically exempted from the provisions of this subsection."

NEW SECTION. Section 30. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 31. Codification instruction. [Sections 1 through 24] are intended to be codified as an integral part of Title 80, and the provisions of Title 80 apply to [sections 1 through 24].

HB 0757/03

- 1 NEW SECTION. **Section 32.** **Effective date.** [This act]
- 2 is effective January 1, 1990.

-End-

1 HOUSE BILL NO. 757

2 INTRODUCED BY GIACOMETTO, WEEDING, BECK, O'KEEFE,
3 MARKS, HARPER, DEMARS, THOFT
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH AN
6 AGRICULTURAL CHEMICAL GROUND WATER PROTECTION PROGRAM TO BE
7 ADMINISTERED BY THE DEPARTMENT OF AGRICULTURE AND THE
8 DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES; TO REQUIRE
9 ESTABLISHMENT OF AGRICULTURAL CHEMICAL GROUND WATER QUALITY
10 STANDARDS; TO PROVIDE FOR GROUND WATER MONITORING AND
11 AGRICULTURAL CHEMICAL GROUND WATER MANAGEMENT PLANS; TO
12 PROVIDE FOR ENFORCEMENT AUTHORITY, COMPLIANCE ORDERS, AND
13 PENALTIES; TO DIRECT THE DEPARTMENT OF HEALTH AND
14 ENVIRONMENTAL SCIENCES TO AMEND CERTAIN RULES IMPLEMENTING
15 THE WATER QUALITY ACT; TO ESTABLISH ADDITIONAL FEES FOR
16 REGISTRATION OF PESTICIDES AND FERTILIZERS; TO CREATE
17 AGRICULTURAL CHEMICAL GROUND WATER PROTECTION ACCOUNTS;
18 AMENDING SECTIONS 75-5-105, 75-5-301, 80-8-105, 80-8-107,
19 AND 80-8-305, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."
20

21 STATEMENT OF INTENT

22 A statement of intent is required for this bill in
23 order to provide guidance to the department of agriculture
24 and the department of health and environmental sciences
25 concerning the administration of the provisions of the bill

THERE IS NO CHANGE IN HB 757/03 AND WILL
NOT BE REPRINTED. PLEASE REFER TO THIRD
READING COPY (BLUE) FOR COMPLETE TEXT.

HOUSE FINAL STATUS

3/02 INTRODUCED
 3/03 REFERRED TO APPROPRIATIONS
 3/11 HEARING
 3/16 HEARING
 3/20 HEARING
 3/22 TABLED IN COMMITTEE

HB 756 INTRODUCED BY MERCER, ET AL.
 FUND THE MONTANA BIOLOGICAL STATION AT YELLOW BAY

3/02 INTRODUCED
 3/03 REFERRED TO APPROPRIATIONS
 3/13 TABLED IN COMMITTEE
 3/16 HEARING
 DIED IN COMMITTEE

HB 757 INTRODUCED BY GIACOMETTO, ET AL.
 CREATE AN AGRICULTURAL CHEMICAL GROUND WATER
 PROTECTION PROGRAM

3/02 INTRODUCED
 3/03 REFERRED TO NATURAL RESOURCES
 3/04 FISCAL NOTE REQUESTED
 3/10 HEARING
 3/10 FISCAL NOTE RECEIVED
 3/17 FISCAL NOTE PRINTED
 3/20 COMMITTEE REPORT--BILL PASSED AS AMENDED
 3/29 2ND READING PASSED AS AMENDED 96 1
 3/30 3RD READING PASSED 97 2

TRANSMITTED TO SENATE
 3/31 REFERRED TO NATURAL RESOURCES
 4/05 HEARING
 4/10 HEARING
 4/11 COMMITTEE REPORT--BILL CONCURRED
 4/12 2ND READING CONCURRED 48 1
 4/13 3RD READING CONCURRED 47 0

RETURNED TO HOUSE
 4/19 SIGNED BY SPEAKER
 4/20 SIGNED BY PRESIDENT
 4/24 TRANSMITTED TO GOVERNOR
 5/12 SIGNED BY GOVERNOR
 CHAPTER NUMBER 668 EFFECTIVE DATE: 1/01/90

HB 758 INTRODUCED BY HANNAH
 PROVIDE SUPPORTED LIVING AND HABILITATION SERVICES
 FOR ADULT DD CLIENTS

3/07 INTRODUCED
 3/08 REFERRED TO APPROPRIATIONS
 3/09 FISCAL NOTE REQUESTED
 3/13 HEARING
 3/13 TABLED IN COMMITTEE

HB 759 INTRODUCED BY O'CONNELL, ET AL.
 APPROPRIATE MONEY FOR GRANTS TO MEDICAL RESEARCH
 FACILITIES

3/07 INTRODUCED

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Chairperson Bob Raney, on March 10, 1989, at 3:30 p.m.

ROLL CALL

Members Present: All members present except:

Members Excused: Rep. Kadas

Members Absent: None

Staff Present: Claudia Montagne, Secretary; Hugh Zackheim,
Staff Researcher, Environmental Quality Council

Announcements/Discussion: None

HEARING ON SB 390

Presentation and Opening Statement by Sponsor:

SEN. JACK GALT, Senate District 16, said the bill was a simple one to extend the authority given two years ago by the legislature to Deadman's Basin Water Users Association to pump over 3,000 acre feet of water out of the mines in Roundup for irrigation purposes. He stated that it was a test pumping project.

Testifying Proponents and Who They Represent:

Rep. Bob Clark, House District 31
Karen Barclay, Department of Natural Resources and
Conservation

Proponent Testimony:

REP. BOB CLARK, whose district includes Roundup, stated that this bill was an extension of SB 151 of the last session. He said that the opponents' fear was that water in the Bull Mountains would be depleted as a result of this pumping. He reminded the committee that this was a test. If the mine pumping was found to be cost effective, it would provide 13,000 acre feet per year in the long run. Only if the testing determined that the water was available with no deterrent effects on water supply, would the project continue.

KAREN BARCLAY testified for the bill as set forth in EXHIBIT 1.

Testifying Opponents and Who They Represent:

Raymond Raths, Roundup, Protective Organization for Water
and Environmental Resources (POWER) and self
Vergil Jones, Roundup, POWER and self
Lowell Rathbun, POWER and self
Kelly Stephenson, self and POWER
Dona Adams, self and POWER
Robert Toombs, self and POWER
Willa Dale Evans, self and POWER
Claudia Hubka, self and POWER
Dawn Cole, self and POWER
Arnold Yttredahl, self and POWER
Arlene Stephenson, self and POWER
Nola Korenko, self and POWER
Jo Ann Hust, self and POWER
Della Carlson, self and POWER
Elizabeth Rathbun, self and POWER
Joyce Egeler, self and POWER
Sylvia Corey, self and POWER
William Paavola, self and POWER
William Finch, self and POWER
Tom Ferguson, self and POWER
Gloria Stevens, self and POWER

Opponent Testimony:

RAYMOND RATHS, representing a ranch in the Roundup area that is a member of the Deadman's Basin Water Users Association, testified against the bill as set forth in EXHIBIT 2.

VERGIL JONES testified as set forth in EXHIBIT 3 and stated that he represented approximately 400 newcomers to the area along the Musselshell River. He suggested that their registered wells should receive first consideration before pumping water out of the mines.

LOWELL RATHBUN, a professional civil engineer who had spent most of his career in charge of water projects for municipalities, showed the committee a map of the county, and located the abandoned mine that lies near Roundup. He said the water went into the mines, and that anytime you drill into the groundwater on the low side, the groundwater upstream would be affected adversely. He spoke of the history of that occurring during the original pumping of the mines in the area. He quoted extensively from an editorial written by him (EXHIBIT 4).

KELLY STEPHENSON, a coal miner from Roundup, and former State Coal Mine Inspector, testified that questions were being asked in these tests that have already been answered for fifty years. He spoke of the inability of getting together with the people for hearings and workshops. He distributed a packet of materials (EXHIBIT 5) as well as a copy of the petition against the pumping project (EXHIBIT 6).

DONA ADAMS, Roundup, testified as set forth in EXHIBIT 7.

ROBERT TOOMBS, Lavina, testified against the bill, stating that it was easy to give something away that doesn't belong to you. He also distributed written testimony, EXHIBIT 8.

WILLA DALE EVANS testified as set forth in EXHIBIT 9.

CLAUDIA HUBKA testified against the bill.

DAWN COLE testified as set forth in EXHIBIT 10.

ARNOLD YTTREDAHL testified against the bill.

ARLENE STEPHENSON testified against the bill (EXHIBIT 11).

NOLA KORENKO testified against the bill (EXHIBIT 12).

JO ANN HUST opposed the bill as set forth in EXHIBIT 13.

DELLA CARLSON opposed the bill as set forth in EXHIBIT 14.

ELIZABETH RATHBUN testified against the bill (EXHIBIT 15).

JOYCE EGELER testified against the bill (EXHIBIT 16).

SYLVIA COREY spoke against the bill (EXHIBIT 17).

DONALD COREY spoke against the bill (EXHIBIT 18).

WILLIAM PAAVOLA spoke against the bill (EXHIBITS 19 and 20).

WILLIAM FINCH spoke in opposition to the bill as set forth in EXHIBIT 21.

TOM FERGUSON stood in opposition to the bill.

GLORIA STEVENS testified as set forth in EXHIBIT 22.

Additional Opponent Testimony:

Alan Jensen, self
Joe Miller, POWER and self, Roundup
Nancy and John Paysinger, selves, Lavina
Emma Hubka, POWER and self, Lavina
E.A. Jarnot, POWER and self, Lavina

Questions From Committee Members:

- REP. HARPER asked of Gary Fritz what had happened since the bill was passed last session. MR. FRITZ said the legislature had appropriated \$272,000 of RIT money for this project. The sponsors had also acquired \$233,000 of federal monies as well. He said the Deadman's Basin Water Users Association had applied for an interim permit for 31 acre feet. If that interim permit would be approved by DNRC, it will be put to use this biennium.
- MR. FRITZ reiterated the testimony of Ms Barclay that this was a phased project. He said the first phase was the compilation of background information on potential subsidence problem and potential impact on existing wells and springs in the area. The second phase was to do the small test pumping of up to 31 acre feet, the interim application before the department at present. Phase 3 would be for a larger pumping project, authorized by the bill before the committee. He said in the last phase, the department would take the information from the first three phases and decide on an economic, hydrologic, and engineering basis whether the project should be put in place permanently.
- MR. FRITZ said the concerns and questions of the opponents were sincere, and that the department, along with the Bureau of Mines and the Lower Musselshell Conservation District, had spent a lot of effort to answer these concerns.
- REP. HARPER asked how long the entire project would take. MR. FRITZ replied that if phase 2 went ahead this biennium, and the larger pumping phase next biennium, it was possible that Phase 4 could be completed next biennium as well.
- REP. HARPER asked Mr. Fritz to address the potential litigation that might occur if the project were to proceed. MR. FRITZ said a permit or license was needed for the project to proceed at each stage. If an individual had objections to the giving of a permit, he or she would have recourse through District Court. He said in such a case, the department would be responsible for its defense expenses.
- REP. HARPER asked if the money for this project could be used to upgrade the capacity of Deadman's Reservoir or for measuring devices. MR. FRITZ said that when the Legislature approved the initial money for this project last session, it also approved money for a study of how water was used. He said that project was being implemented now with the installation of gaging devices. He said that the reservoir was drained each year, and that there was nothing to be gained from additional capacity, since the Musselshell River suffered from chronic water shortages.

HOUSE COMMITTEE ON NATURAL RESOURCES

March 10, 1989

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REP. ROTH asked about the water quality questions that had been raised in opponent testimony. WAYNE VAN VOST, Bureau of Mines and Geology, Billings, said that they had data that suggested that the water is fine for agriculture. He said in order to adequately test for PCB's or carcinogens, they would have to pump the mine aquifer to create flow.

REP. O'KEEFE asked SEN. GALT how many members were in the Deadman's Basin Water Users Association, and how many acres were involved. Neither Mr. Fritz nor Sen. Galt had exact figures, but indicated the boundaries of the district. REP. O'KEEFE commented on the absence of proponents, and MR. FRITZ and SEN. GALT indicated that there were proponents, but that they had had transportation difficulties.

REP. RANEY asked Mr. Stephenson how much water had been pumped out of the mines. MR. STEPHENSON said that every drop of water pumped out of the mine had run through his land, and that there was never a time that there was enough water to irrigate 20 acres.

REP. RANEY expressed concern to Sen. Galt about the economic development of the area, asking where new residents would find water. SEN. GALT said they would get the water from the aquifer as was done at present. He said he believed the Bull Mountain aquifer was not connected to the mine aquifer, as did the Bureau of Mines and Geology.

MARVIN MILLER, Bureau of Mines and Geology, Butte, said the majority of wells in the Bull Mountains were shallow, and did not reach the depth of the mine aquifer. He said the Bull Mountains drain slowly or leak into the mines, and that was what was being de-watered. He said it was important to look at the potential large underground storage area, which could be utilized and recharged during the flood stage of the Musselshell River. He agreed that the water quality needed to be examined, but that it appeared that the quality of the water in the mines was better than that of the Musselshell River at low water stage. He said this was an opportunity to look at the feasibility of increasing the water availability in the Musselshell Basin.

REP. RANEY asked Mr. Miller to address the potential drying up of wells in response to the pumping of the mine waters. MR. MILLER replied that the wells and springs in the area were being evaluated and inventoried. All through the test and in the future, there would be numerous wells monitored to evaluate that eventuality. Regarding a dry well, it would have to be determined that it dried up due to the de-watering of the mine. He suggested that in many instances it might not, and cited the numbers of dry wells that occurred during the previous summer.

REP. RANEY suggested that if all of the wells were above the mine aquifer, that the de-watering of the mine would lower the

water table. MR. MILLER said the water table in the mine itself would be lowered, but there would be no additional water from the leakage. He said there was already leakage towards the mine itself, and by de-watering the void space, there would be no additional leakage. MR. MILLER entered into the record portions of the Bureau of Mines and Geology's preliminary report submitted to the Water Development Bureau of DNRC, which addressed the hydrogeology of the project area (EXHIBIT 23).

Closing by Sponsor: SEN. GALT apologized for the absence of proponents, of which he said there were many. He reminded the committee that this was a test project to see if this water could be used economically and without harming anyone. He said there had been three hearings, and that the project would only be continued if there were no significant detrimental environmental effects or adverse impact on any individual's water supply.

DISPOSITION OF SB 390

Hearing 3/10/89

Motion: REP. COHEN moved DO NOT PASS on SB 390.

Discussion: REP. COHEN said he had not heard one word from any proponents. REP. RANEY said he had opposed the bill during the last session and continued to do so. REP. ROTH said he had a problem with the opposition when the project was a testing procedure.

Substitute motion: REP. ROTH moved DO PASS on SB 390.

Discussion: REP. CLARK spoke on the substitute motion, saying that the Musselshell River had not been adjudicated, which led to a huge problem with irrigation by the time the water reached Roundup. He said Deadman's Basin was a natural basin, and that when the river got as low as it did this summer, irrigators could not get any water out of it. He said communities such as Melstone on the lower end of the Musselshell found themselves without water. He said this idea came up every 10 years, but there had never been a proposal to do the testing necessary to see if the idea was viable.

REP. CLARK said he had spent much time on the project, and personally felt there was not enough water in the mines to pump out the amounts suggested. However, he said these were things we could never know without this testing. He said the grant application covered every concern the people raised. He said the opposition was based on emotion, and that there had been a breakdown in communication due to the leadership of the opposition. He reminded the committee

that the project would be shut down if there were any adverse impacts at any stage.

REP. COHEN said that Rep. Clark made compelling arguments in favor of the bill. However, he said it bothered him to have the Legislature override the people's wishes in the community. He said these compelling arguments needed to be made by those people.

REP. ADDY expressed the concern that the project would allow for the appropriation of groundwater in excess of 3,000 acre/feet per year. He said there was no cap on it. He asked if there was some middle ground here. REP. CLARK said the law did not require a permit for anything less than 3,000 acre/feet. Therefore he said the entire project would be permitted in steps; these permits would specify how much could be pumped. He said the 31 acre feet of water was the test pumping, and would determine if there was any detrimental effect. REP. CLARK said the long range project was for 13,000 acre feet, but that the permits would be for amounts less than that. REP. ADDY said the middle ground would be to permit testing to either prove or disprove the theories, and wondered why a blank check was being written for the initial withdrawal of 31 acre feet. REP. CLARK said that coming to the legislature was necessary due to the amount of money requested, not the amount of water.

REP. HARPER said that his concern was the possibility of irretrievable effects from the pumping of the mines, and that it might take years for those effects to show up. He said the people were motivated to fight this project because they remembered that when the mines ran, and pumping took place, the wells and springs were dry.

REP. CLARK said the project proposed to replenish the mine water, and to use the mine as a reservoir out of which water would be pumped in the summer.

REP. ADDY repeated that 3,000 acre feet/year did not represent testing. REP. CLARK replied that that amount would be pumped in phase 4, which was 5-6 years down the road.

REP. HARPER said the fear the people felt was important, and that they would file a lawsuit. REP. CLARK said the deadline was September 30, and that this bill merely extended that deadline.

REP. GIACOMETTO asked if the executive action could be postponed for more information.

Amendments, Discussion, and Votes: None

Recommendation and Vote: REP. GIACOMETTO moved that executive action on SB 390 be postponed. The motion CARRIED.

HEARING ON SB 201

Presentation and Opening Statement by Sponsor:

SEN. TOM KEATING, Senate District 44, opened on the bill which was a follow up measure enacted two years ago requiring the preparation and adoption of an programmatic environmental impact statement (EIS) dealing with oil and gas permitting. He said that during that time, the permitting for oil and gas was exempt under the Montana Environmental Policy Act. He said this exemption was to last until the completion of the programmatic EIS. He said that the programmatic was not printed until February of 1989, and was now being heard in public meetings. He said that SB 201 asked for a two year extension to give the Board of Oil and Gas Commission time to review the document, and to give the Governor the opportunity for additions or corrections before final presentation to the board. He mentioned that the Board of Oil and Gas Commission had four new members who needed to gain familiarity with the document.

Testifying Proponents and Who They Represent:

Jim Nelson, Chairman, Board of Oil and Gas Conservation
Dave Darby, Department of Natural Resources and Conservation
Joe Keating, General Manager, Cenex
John Moore, Attorney, Cut Bank, Independent Operators and Oil Drillers
Doug Abelin, Montana Oil and Gas Association
Patrick Montalban, MSR Exploration Limited
Janelle Fallan, Montana Petroleum Association
Dan Mitchell, Cut Bank

Proponent Testimony:

JIM NELSON testified that they needed the time to consider the programmatic EIS that was submitted to the board in the end of January. He said it was a comprehensive document covering all phases of oil and gas production which would have long lasting impacts on the industry. He said to ask the board to complete the review by June 30 deadline would ensure an inadequate job of incorporating public comments, writing any redrafts, drafting of an implementation schedule and considering any rule changes. He said they needed at least one year, or as much time as the legislature was willing to give them

DAVE DARBY, Deputy Director, DNRC, testified as a member of the Governor-appointed Oil and Gas Drilling Advisory Council that offered guidance and direction in the preparation of the EIS. He said it was his belief that one could meet the technical requirements of the law by the deadline date. However, in light of the new board, and the steps necessary

to get them up to speed in order for them to make a reasoned decision, he said a time frame of six months to a year was reasonable to consider.

JOE KEATING, General Manager of Exploration and Production, and a member of the Governor's appointed Advisory Council to assist in the development of the programmatic, said it would be a mistake to force the board into a hasty adoption, and that if some value was to be derived from this EIS, they should be given the time to do the job properly.

JOHN MOORE, attorney, said Cut Bank was reeling from the impact of the previous administration's onslaught from the Department of Revenue, the State Land Board, and the EPA. He said drilling had been tied up, and there were no new wells being drilled. He said this was a chance to do something for the industry. He said they needed time within the industry to evaluate and develop proper programmatic control. He said they needed an informal advisory panel of actual small operators for the governor to get the input. He said they were not trying to avoid responsibility for industry's mistakes, but that the board needed at least two years to effectively complete the programmatic EIS process. (EXHIBIT 24).

DOUG ABELIN testified that he had helped develop the idea of the programmatic. He said it was complex, as was the industry, and that with four new board members, the benefit of additional time was needed to enable them to make the best document they could.

PATRICK MONTALBAN said MSR operated 200 -250 wells in the Sweet Grass Arch. He said that if Montana went to this new program, things would change drastically for the small stripper wells and the development wells. He suggested that the study was ridiculous and represented an overkill. He mentioned in particular the dust pollution created by the transfer of materials from the drill site to town, and the diesel motors operating the pumps. More important, he said, was the fact that with this program, the industry would not be able to develop these wells quickly. He also expressed concern about the cost of the plan when it was implemented. He suggested that the attitude in the state of Montana had to change. He said that the new board members needed one to two years to go through the programmatic EIS.

JANELLE FALLAN said that the draft EIS was an excellent and informative document in many ways. She raised questions as to whether it fulfilled all of the requirements of SB 184. She reiterated that more time was needed because of the new membership on the board. She suggested that time was needed just in completing the work needed for the preparation of the final EIS, and in figuring out how the Oil and Gas Board would live in an essentially different world.

DAN MITCHELL said he had 46 years of experience in the oil and gas industry in Montana. He said to his knowledge, there had never been problems with the rules regulating the industry, and said he knew of no examples where there had been environmental damage to the surface from drilling an oil and gas well. He said the industry rules and regulations might need a few changes, but did not need the changes suggested in the draft EIS. He said the Board of Oil and Gas Commission needed more time to review the document.

Testifying Opponents and Who They Represent:

Jim Jensen, Montana Environmental Information Center
Mary Ann Kelly, Bridger Watch
Janet Ellis, Montana Audubon Legislative Fund
Stan Bradshaw, Montana Council, Trout Unlimited
Kim Wilson, Montana Chapter of the Sierra Club
Brant Quick, Northern Plains Resource Council

Additional Proponent Testimony:

Gary McCabe, Attorney, Great Falls (EXHIBIT 30)

Opponent Testimony:

JIM JENSEN gave a slide show to illustrate what was actually going on in the oil fields and why MEIC believed that the industry was not benign, not clean, not managed, but was in fact indifferent, callous and polluting in Montana. He said the programmatic EIS needed to be implemented on a timely basis. He suggested that what the committee had heard regarding the need for more time was in fact a smokescreen by the industry to avoid compliance with the recommendations of the programmatic. The slides consisted of views of oil spills and unlined sludge pits, current pumps leaking oil, abandoned operations, and the impacts on the ecosystem.

MR. JENSEN said the purpose of MEPA was to incorporate a planning strategy from the beginning wherever the earth was disturbed for the recovery of natural resources. He said that this ounce of prevention was worth more than a million dollars worth of cure. He quoted Sen. Keating's statement that the oil and gas industry had not done any damage, had cleaned up its mess when it was done, and therefore deserved a time extension. MR. JENSEN said the truth was that the industry had received or would receive \$1,630,352 from the RIT fund, an amount which represented a fair amount of damage. He urged the committee to kill the bill and to keep the pressure on the industry.

MARY ANN KELLY testified against the bill as set forth in EXHIBIT 25. She also distributed a report on the Lodgepole Blowout, produced by the Alberta Energy Resources Conservation Board (EXHIBIT 26). She showed slides of this blowout.

JANET ELLIS distributed a copy of the schedule that would have to be followed in order for the programmatic EIS to be adopted by the Board of Natural Resources within the original time frame. She suggested that although the schedule was tight, it was possible to meet. She submitted amendments to allow a two month extension for the Board of Oil and Gas. She said this extension was thought to be reasonable because there were misunderstandings regarding the MEPA requirements. She said the adoption of a checklist would enable the Oil and Gas Commission to technically comply with MEPA. She said no rule changes would need to be adopted for compliance. Included in her exhibit was a sample checklist and a list of sensitive environmental features to be considered in oil and gas development (EXHIBIT 27).

MS ELLIS quoted Jim Nelson from the Senate hearing as saying an extension of time was needed to adopt the programmatic; they were running at least a month behind. MS ELLIS questioned the need for a two year extension if they were running a month behind. Upon being asked by one of the senators how much time would be needed to comply and adopt the programmatic, Mr. Nelson had replied that the board would use whatever time the Legislature would allow. MS ELLIS urged the committee to amend the bill.

STAN BRADSHAW testified against the bill.

KIM WILSON submitted testimony as contained in EXHIBIT 28.

BRANT QUICK stood in opposition to the bill and submitted testimony on behalf of Connie Wilson, landowner representative on the Oil and Gas Advisory Council, in opposition to the bill. Her testimony was on behalf on the Northeast Land and Mineral Owners Association (EXHIBIT 29).

Additional Opponent Testimony:

Butch Turk, Missoula (EXHIBIT 31)

Questions From Committee Members:

REP. ROTH asked Ms Kelly about the subject of the slide show, when the blowout occurred, and what percentage of active wells had a blowout like that. MS KELLY said it had occurred in 1982, and that such blowouts were rare. REP. ROTH asked if she knew of any similar blowouts that had occurred in Montana. MS KELLY said one had happened in Fairview in October of 1988. She said wells in that

geologic structure (the overthrust) and at that depth presented the chance for potential blowout.

- REP. BROOKE drew a parallel with the situation with which the Legislature was faced, that of meeting a deadline in response to a Supreme Court ruling with 33% new membership. She asked Mr. Nelson if this was not a comparable situation, and asked for a response. MR. NELSON said they was not working full time. He said they would have to call special meetings, and would need 6 months to a year to do a good job.
- REP. MOORE asked about the potential for blowouts with the blowout control apparatus that she had seen the week previous on the tour. SEN. KEATING said the potential would be extremely slim due to the redundancy in the mechanical protection. He said the blowout referred to in the hearing was due to human error. He said there was no death, damage or harm from the blowout at Fairview. He said the potential for harm and permanent damage from blowouts was nil.
- REP. HARPER asked if Mr. Nelson thought the majority of the board intended to adopt the programmatic EIS. MR. NELSON replied that the consequences of the board not adopting the EIS, or some form of it, were catastrophic, and that in his opinion, the board would adopt this EIS or some form of it at some point in time. REP. HARPER asked for the time frame for the noticing the rules with the Secretary of State. MR. NELSON said that Chapter 5 of the programmatic made a number of recommendations that may or may not require rule changes. He said they would like to add an implementation schedule into the EIS, and until the board considered the recommendations and the implementation of the recommendations, somewhere down the road from that perhaps some rule changes would be proposed. He agreed that adopting rule changes was necessary to adopt the EIS. He envisioned the rule making process continuing over several years.
- REP. RANEY asked about the backgrounds of the four new board members. MR. NELSON said that Dave Shanen was formerly with the oil industry, Bob Rhodes was formerly with Montana Power, Stan Lund is a rancher/landowner from Reserve, and Scott Gage is a Certified Public Accountant from Cut Bank.
- REP. ADDY asked Mr. Mitchell to reconcile his statement that there hadn't been any problems created by drilling in the state of Montana with the slides shown to the committee. MR. MITCHELL said he was only familiar with one of the slides. He said anyone could take a camera and take a shot down low to make it look real bad. He said the damage in the old Kevin field represented old wells drilled in the twenties.

- REP. ADDY asked Mr. Nelson why this task could not be completed before June 30, 1990. MR. NELSON said his testimony was that they needed 6 months to 1 year. REP. ADDY asked if a deadline of December 31, 1989 would provide adequate time. MR. NELSON said yes, and that they considered 6 months to be on the short side.
- REP. GILBERT asked if the protests were more against production than what was really addressed in the EIS, the issuance of drilling permits. MR. NELSON said that there were problems with the concept of the EIS itself and the necessity for it. He said the industry comments at the public hearings indicated that there was no need for this programmatic EIS, that it would complicate their lives and their business to the point of not being able to function in the future. He said landowner comments had indicated that there were things that had not been considered such as the adoption of rules on salt water collection.
- REP. GILBERT asked if it was correct that the industry did feel that the time had come for regulation, and that this was the least onerous method at this point. He said it would give industry some control, at the same time allowing permits to be more easily obtained on ground already drilled up. MR. NELSON said the Legislature passed SB 184, and the Board would comply with the letter and the spirit of that law. He said that fortunately, the board governs and regulates with a fair amount of common sense, and appreciated the importance of the oil and gas industry to the state. He said some form of an EIS would be adopted in such a fashion that it made sense, did not cripple the industry, and accomplished the legislative mandate. REP. GILBERT suggested that quality was better than quantity, and asked if some extension of time would be preferable. MR. NELSON said another six months to a year would be time well spent.
- REP. GILBERT commented that an additional 2 years would put us into another legislative session. He said he was prepared to offer an amendment for an extension of 1 year, prior to the convening of the next legislative session. Part of the amendment would include the requirement that the board start a plan immediately, with a bi-monthly progress report to the Environmental Quality Council. MR. NELSON said the board appreciated the task before them, and that the year would be used constructively. He said the board would be happy to consult with the EQC.

Closing by Sponsor:

- SEN. KEATING said he stood behind his comments that the industry cleaned up as they completed drillings. He reminded the committee that this was for the permitting process for new wells. He also stated that the oil and gas industry had contributed \$45 million to the RIT fund, and that less than

half of the \$1 million mentioned by Mr. Jensen had ever been used for actual surface or environmental reclamation. He reiterated that the Board of Oil and Gas Commission was not a full time board, and encouraged the committee to allow them the full two years for the review process of the EIS.

DISPOSITION OF SB 201

Motion: REP. GIACOMETTO moved the bill DO PASS.

Discussion: None

Amendments, Discussion, and Votes: REP. GIACOMETTO moved Rep. Gilbert's amendment, and asked Mr. Zackheim to read it. The amendment read that the extension would be 1 year from the current law, making the date of adoption no later than June 30, 1990. Additionally, the amendment would require written progress reports after each meeting of the Board of Oil and Gas, and after any special meetings that addressed implementation of the programmatic. These reports would be sent to the EQC.

REP. COHEN called for a segregation of the amendments: 1) the date of adoption of the programmatic, and 2) the requirement of written reports. He commented that the extension was too lengthy, and suggested August 31, 1989, which was six months from the day's date.

REP. RANEY segregated the amendments, and the question was called on the amendment covering the reporting requirements. The motion CARRIED unanimously.

REP. COHEN spoke on the Gilbert amendment regarding the time period, and indicated that it provided more time than necessary. REP. ROTH commented that the Cohen amendment did not provide enough time.

Substitute Motion: REP. HARPER offered a compromise amendment, which set the date for adoption at September 30, 1989. REP. GIACOMETTO opposed the substitute motion, stating that rushing through the task would not benefit anyone. REP. ADDY said a year was a compromise. He said if the committee sent it out with a shorter date than that, there would be a floor fight. REP. COHEN said his concern was that as long as the programmatic was not adopted, there was no regulation at all in place. REP. OWENS commented that a year was requested in good faith by the sponsor and the department. REP. RANEY said that Mr. Nelson had said that 6 months was adequate.

Substitute motion for all motions pending: REP. BROOKE moved that the date for adoption be December 31, 1989. REP.

GIACOMETTO opposed the amendment. The motion CARRIED on a roll call vote, 11-5.

Recommendation and Vote: REP. HARPER moved the bill BE CONCURRED IN AS AMENDED. The motion CARRIED with Rep. Clark, Rep. Cohen, and Rep. Giacometto voting no.

HEARING ON HB 757

Presentation and Opening Statement by Sponsor:

REP. GIACOMETTO opened on HB 757, Montana's Agricultural Groundwater Protection Act, and turned the hearing over to the proponents.

Testifying Proponents and Who They Represent:

Pam Langley, Montana Agricultural Business Association
Valerie Larson, Montana Farm Bureau
Ron DeYong, Montana Farmers Union and the Montana Water Resources Association
Peggy Haaglund, Montana Association of Conservation Districts
Larry Johnson, Montana Grain Growers Association
LeRoy Luft, Montana State University, Extension Service
Carol Mosher, Montana Stockgrowers Association, Montana Cattlewomen
Gary Gingery, Montana Department of Agriculture
Steve Pilcher, Montana Department of Health and Environmental Sciences

Proponent Testimony:

PAM LANGLEY, Executive Director of MABA, said her organization was made up of a group of rural businesses, primarily chemical fertilizer dealers, and had been a very environmentally minded association for some time. She testified for HB 757, which had been nearly a year in the making. She said HB 757 had its basis not only in the experiences of other states, but also in the EPA document, "Agricultural Chemicals in Groundwater, Proposed Pesticide Strategy", December, 1987. She continued her testimony as outlined in EXHIBIT 32.

VALERIE LARSON testified that the bill was needed to protect the groundwater. She said it addressed monitoring, proper use of agricultural chemicals, ground water standards, and ground water management plans. She said her organization liked the dual administrative authority between the Department of Health and Environmental Sciences (DHES) and the Department of Agriculture (DOA). She said the bill provided penalties for violators, and protections for those who followed the rules and directions in the groundwater

management plans. It also provided education and training for applicators and the general public.

RON DE YONG testified that the bill set up the framework for keeping Montana's water clean, while still keeping farming a viable economic endeavor. He said the bill also allowed for farmer input into the management plans, and provided for education. He cautioned the committee against adding any amendments because consensus on this complex issue had been reached among major farm organizations. He said the bill would be worked on every session from now on, and suggested that major changes would be better handled in the future when there was a data base and experience.

PEGGY HAAGLUND stood in favor of the bill.

LARRY JOHNSON, small grains producer from Kremlin, testified that the bill represented a practical, responsible solution to maintaining the quality of water in Montana. He said the bill was an effort by farmers, the chemical industry, applicators, environmental concerns and regulatory agencies to come to grips with the problem of groundwater contamination. He said that farmers wanted to protect water as an asset as well as their right to use chemicals until another method was developed. See EXHIBIT 33.

LEROY LUFT testified that his organization was written into the bill to provide technical assistance in the development of the best management plans as well as to provide for education and training of chemical applicators. He said they offered their support as outlined in the bill.

CAROL MOSHER stood in support of the bill and the concept.

GARY GINGERY pointed out that the bill brought together state agencies and the university system as a team to work on this effort. See EXHIBIT 34.

STEVE PILCHER, Chief, Water Quality Bureau, testified as set forth in EXHIBIT 35. He said the bill attempted to avoid a collision between Montana's non-degradation policy under the Water Quality Act and the continued use of ag chemicals. He said the bill should not be used to give preferential treatment to one activity that had pollution potential, but instead should be used to allow the continued proper use of ag chemicals and at the same time protect water quality.

Additional Proponent Testimony:

John Semple, Montana Aviation Trades Association (EXHIBIT 36)

Montana Weed Control Association (EXHIBIT 37)

Testifying Opponents and Who They Represent:

Dave Oien, self and Alternative Energy Resource Organization
(AERO)

Nancy Matheson, AERO

Stan Bradshaw, Montana Council, Trout Unlimited

Jim Jensen, Montana Environmental Information Center

Janet Ellis, Montana Audubon Legislative Fund

Brant Quick, Northern Plains Resource Council

Opponent Testimony:

DAVID OIEN, diversified farmer from Conrad, testified as set forth in EXHIBIT 38.

NANCY MATHESON testified as set forth in EXHIBIT 39.

STAN BRADSHAW distributed two different articles from the Journal of Pesticide Reform (EXHIBITS 40 and 41). He said the articles addressed at length the problem with the approach represented by this bill. He said that Trout Unlimited's interest in this was due to the inter-relation between ground and surface waters. He said he was heartened to hear a commitment to the idea and the recognition that there was a problem to be addressed. He said his first exposure to the bill was in mid January. He said he had given Ms Langley his broad thematic concerns, but that the rewritten bill did not address those concerns.

MR. BRADSHAW said the bill did not address the need to prevent further groundwater contamination. Instead it sanctioned the pollution of groundwaters up to certain levels and classified certain groundwaters as more pollutable. He said the program was costly and unenforceable. He submitted some amendments that might make the bill more workable (EXHIBIT 42). He asked the committee to consider these amendments in light of his relative expertise, and to treat them as guideposts to the types of changes that would be needed. He said the amendments addressed the issues of accountability, prevention of further pollution, enforceability, and encouragement of alternatives to chemical use. He added that if the bill was put into a subcommittee, he hoped the amendments would provide some useful guidance. Ultimately, he hoped the bill would be put into an interim study in EQC.

JIM JENSEN testified that there was one point in opposition to the bill to re-emphasize, and that was the bill's inability to be enforced. He referred the committee to page 22, line 2, where the department may not undertake compliance and enforcement actions authorized by the bill unless there was sufficient evidence collected through monitoring. He reminded the committee of the expense of the monitoring, and also directed the committee to the section which said the department may conduct monitoring. He suggested that the

legislature direct EQC to bring all parties to the table to deal with this problem.

JANET ELLIS testified as in EXHIBIT 43.

BRANT QUICK testified as neither an opponent nor a proponent. He said the bill needed more looking at. See EXHIBIT 44.

Questions From Committee Members:

REP. RANEY said the bill would be addressed in executive session the week following. He assigned a subcommittee composed of Rep. Harper (if his schedule permitted), Rep. Giacometto and Rep. Cohen. Due to time constraints, he suggested that questions be asked at the executive session.

Closing by Sponsor:

REP. GIACOMETTO said he would address some of the misconceptions regarding the bill. He said he agreed with AERO and its statements; however, he said that it must be realized that AERO's underlying goal was no use of chemicals. He added that the reality was that chemicals were used, and some control needed to be in place. He said the bill covered point and non point contamination. He said there was a clean up provision under the Water Quality Act, and therefore did not need to be addressed in this bill. Regarding standards, he said the bill proposed the adoption of EPA standards which covered 90% of the chemicals.

REP. GIACOMETTO said that the monitoring could be easily accomplished by monitoring domestic wells on the ranches and farms. He said that the funding was more than adequate based on the fee structure.

REP. GIACOMETTO said agencies, the university and the agricultural organizations were in support of these regulations, a regulatory proposal which the agricultural industry was bringing in on itself. He said there were teeth in the bill in the form of a \$25,000/day fine. He submitted the testimony of Mr. Semple of the Montana Aviation Trades Association, and the Montana Weed Control Association into the record (EXHIBITS 36 and 37).

HEARING ON HB 754

Presentation and Opening Statement by Sponsor:

REP. HARPER opened on the bill, saying anglers would pay \$1.00 to \$.50 on their licenses for a river recovery fund to support a river restoration program. He said the idea was

not originally developed to include the possibility of using the fund for leasing. He said the original idea was that the state's fishable river area was shrinking and needed to be expanded. He said the fiscal note indicated that \$1 out of this fund would match \$3 from the federal Dingell-Johnson money for potential leasing if that concept was included in the bill.

Testifying Proponents and Who They Represent:

Stan Bradshaw, Montana Council, Trout Unlimited
Pete Test, self
Don Chance, Montana Wildlife Federation
Janet Ellis, Montana Audubon Legislative Fund
Jim Jensen, Montana Environmental Information Center
George Ochenski, Alliance for Montana Water

Proponent Testimony:

STAN BRADSHAW testified that the bill established an account into which money could be placed, raised some fishing license fees, and identified what that money could be spent for. Those purposes were the physical rehabilitation of streams and associated lands, and the lease or purchase of water or water rights if the law allowed that.

MR. BRADSHAW said the bill did not restrict land use by landowners adjacent to streams, did not authorize the imposition of any such restrictions, did not authorize the entry onto landowners' land, did not authorize the taking the water from anyone, and did not authorize any circumvention of the Streambed Preservation Act. He said the bill created a fund for rehabilitation of streams where there were willing landowners and where the law allowed it to happen. He urged the committee's support.

PETE TEST, sportsman from the Helena area, said the price of a fishing license in Montana was one of the best bargains around. He felt the additional \$.50 on the license was a small amount for the good that could be done.

DON CHANCE stated that the federation had a strong commitment to protecting and improving one of the richest habitat types in the state, the riparian zones. He said they, as sportsmen, were willing to financially back such a program which would benefit both sportsmen and non sportsmen. He said it would not only enhance the fishery, but also the stream quality. He said the bill did nothing to force anyone to participate in any program, but merely created a fund from which river restoration projects could be funded. He urged the committee to give a Do Pass. He shared with the committee his experiences with two similar programs, one on the French Broad River and one in Washington, both of which were effective, well received programs.

JANET ELLIS said riparian areas were productive, yet limited, areas, and said the bill was very important. She reminded the committee that a similar bill had just passed the House that morning, dealing with habitat instead of water. She reiterated that nothing could be done on private land without the private landowners' permission. She distributed a riparian area fact sheet, EXHIBIT 45, and urged support for the bill.

JIM JENSEN testified that MEIC wished to go on record in support of the bill.

GEORGE OCHENSKI said the bill developed from his and Hal Harper's idea. He said the concept was similar to the Environmental Quality Protection Fund. He said that the \$.50 was a small amount for each individual to spend, but would provide the state with \$100,000 per year to work on the rivers. He referred to a handout, EXHIBIT 46, a list of America's 100 best trout streams from Trout Magazine. He noted that Montana had the best of what there was in the way of trout streams in the United States. He spoke of the positive fiscal impact of these trout streams on Montana's economy, citing statistics from the Travel Promotion Bureau. He said that the river resource was shrinking, there was an increase in out-of-state visitors, and that more of the economic base was being derived from tourism. He suggested that it made sense to expand and protect the fishable rivers in the state, and urged the support of this bill.

Testifying Opponents and Who They Represent:

Valerie Larson, Montana Farm Bureau
Jesse Malone, Teton River Water Users Association
Kim Enkerud, Montana Association of State Grazing Districts
Carol Mosher, Montana Stock Growers and the Montana
Cattlegrowers
Peggy Haaglund, Montana Association of Conservation
Districts

Opponent Testimony:

VALERIE LARSON testified as set forth in EXHIBIT 47.

JESSE MALONE testified against the bill as set forth in EXHIBIT 48.

KIM ENKERUD testified as set forth in EXHIBIT 49, and also distributed a diagram of riparian zones, EXHIBIT 50.

CAROL MOSHER testified against the bill as in EXHIBIT 51. She said two other groups had asked that she put their names

into the record as being opposed to the bill: Montana Water Resources Association (EXHIBIT 52) and the Montana Farmers Union.

PEGGY HAAGLUND testified against the bill as set forth in EXHIBIT 53.

Questions From Committee Members:

REP. GIACOMETTO asked Rep. Harper about his definition of riparian zone, and REP. HARPER said the bill would address the riparian habitat in that zone. REP. GIACOMETTO asked if he was talking about improving that habitat. REP. HARPER said he understood the concern of individual property owners, because the rivers ran through private land. He said he was formulating an amendment stating that this bill would in no way impact private property rights, or access to or use of an individual's property.

REP. OWENS asked how these projects would get past the Streamside Management Act or requirements for an EIS. REP. HARPER said the Conservation Districts would be the local experts to notify and to consult. He said the 310 process would cover the project.

REP. ROTH asked how he would get this project implemented on a place of his on the Stillwater River that had an eroding bank. REP. HARPER said he could make an application to the department, but that the more he thought about it, he realized more communication with the local people through the 310 process was needed. This would include the Conservation District and the Department of Fish, Wildlife and Parks.

REP. ROTH asked if Rep. Harper would object to taking the section on leasing out. REP. RANEY said that these were questions that could be addressed in executive session.

REP. COHEN asked Peggy Haaglund what her amendment was. MS HAAGLUND said she had several. 1) The individual had to be addressed. 2) The Conservation District should be involved and the 310 process should be mentioned, as well as other permits that might be necessary. 3) The definition of associated land and the definition of river should be changed to be consistent with other statutes.

Closing by Sponsor:

REP. HARPER closed.

DISPOSITION OF SB 91

Hearing 3/1/89

Motion: REP. COHEN moved the bill DO PASS.

Discussion: None

Amendments, Discussion, and Votes: REP. COHEN moved amendments which were distributed to the committee. He said Rep. Moore and he met with Dan Mizner and DSL on all of these issues, with the end product being these amendments. He said they had looked at conservation easements and covenants, and reached an accord.

REP. GIACOMETTO asked if the sponsor of the bill was in agreement. REP. COHEN said the sponsor said he trusted the changes made by the subcommittee. The motion on the amendments CARRIED unanimously.

Recommendation and Vote: REP. COHEN moved the bill DO PASS AS AMENDED. The motion CARRIED unanimously.

DISPOSITION OF SB 371

Hearing 3/8/89

Motion: REP. ADDY moved the bill DO PASS.

Discussion: None

Amendments, Discussion, and Votes: None

Recommendation and Vote: The motion CARRIED unanimously.

DISPOSITION OF HB 385

Hearing 3/8/89

Motion: REP. ADDY moved the bill BE CONCURRED IN.

Substitute Motion: REP. OWENS moved to TABLE the bill.

Vote: The substitute motion FAILED.

Amendments, Discussion, and Votes: REP. HARPER moved an amendment to re-insert petroleum products into the bill. REP. RANEY clarified that the amendments in questions would put all of the language that the Senate struck with regards to petroleum products back into the bill, with the exception of crude oil at production facilities. He said lubricating oil was inadvertently omitted and should be inserted back in.

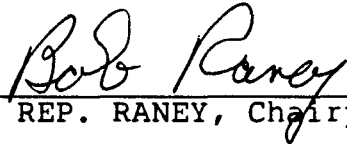
REP. HARPER moved to amend the amendment by inserting lubricating oil. The motion on the amendment to the amendment CARRIED unanimously.

REP. HARPER asked Jerome Anderson if HB 143 picked up where this bill left off, and MR. ANDERSON said yes. The motion on the amended amendments CARRIED, with Rep. Owens voting no.

Recommendation and Vote: REP. BROOKE moved that SB 385 BE CONCURRED IN AS AMENDED. The motion CARRIED unanimously.

ADJOURNMENT

Adjournment At: 8:20 p.m.



REP. RANEY, Chairperson

BR/cm

5612.min

DAILY ROLL CALL

HOUSE NATURAL RESOURCES COMMITTEE

50th LEGISLATIVE SESSION -- 1989

Date 3-10-89

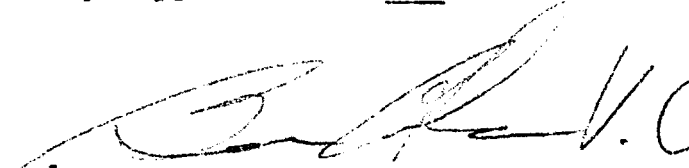
NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Raney, Chairman	✓		
Rep. Ben Cohen, Vice-Chairman	✓		
Rep. Kelly Addv			✓
Rep. Vivian Brooke	✓		
Rep. Hal Harper	✓		
Rep. Mike Kadas	✓		
Rep. Mary McDonough	✓		
Rep. Janet Moore	✓		
Rep. Mark O'Keefe	✓		
Rep. Robert Clark	✓		
Rep. Leo Giacometto	✓		
Rep. Bob Gilbert	✓		
Rep. Tom Hannah	✓		
Rep. Lum Owens	✓		
Rep. Rande Roth	✓		
Rep. Clyde Smith	✓		

STANDING COMMITTEE REPORT

March 11, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report that SENATE BILL 201 (third reading copy -- blue) be concurred in as amended .

Signed: 
Bob Raney, Chairman

[REP. HANNAH WILL CARRY THIS BILL ON THE HOUSE FLOOR]

And, that such amendments read:

1. Title, line 8.

Strike: "JUNE 30, 1991"

Insert: "DECEMBER 31, 1989"

2. Title, line 12.

Strike: "JUNE 30, 1991"

Insert: "DECEMBER 31, 1989"

3. Page 4, lines 13 and 14.

Strike: "June" on line 13 through "1991" on line 14

Insert: "December 31, 1989"

4. Page 4, line 18.

Strike: "June" through "1991"

Insert: "December 31, 1989"

5. Page 6, line 9.

Following: "gas."

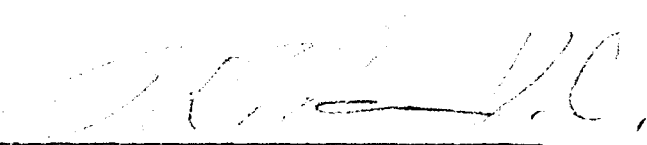
Insert: "(d) Until the programmatic environmental statement is adopted, the board of oil and gas conservation shall prepare a written progress report after each regular meeting of the board and after any special board meeting that addresses the adoption or implementation of the programmatic environmental statement. A copy of each report must be sent to the environmental quality council."

STANDING COMMITTEE REPORT

March 11, 1989

Page 1 of 3

Mr. Speaker: We, the committee on Natural Resources report that SENATE BILL 91 (third reading copy -- blue) be concurred in as amended .

Signed: 

Bob Raney, Chairman

[REP. WILL CARRY THIS BILL ON THE HOUSE FLOOR]

And, that such amendments read:

1. Title, line 9.

Strike: "EXISTING"

Following: "FROM"

Insert: "CERTAIN"

2. Title, line 10.

Following: "EASEMENTS;"

Insert: "PROVIDING FOR CONSERVATION EASEMENTS FOR SALES;"

Following: "BOARD;"

Insert: "CLARIFYING THE BIDDING REQUIREMENTS FOR SALE OF STATE LANDS;"

3. Title, line 11.

Following: "77-2-301"

Strike: "AND"

Insert: ", "

Following: "77-2-303,"

Insert: "AND 77-2-324,"

4. Page 3, line 10.

Strike: "EXISTING"

5. Page 3, line 14.

Strike: "EXISTING"

6. Page 3, line 15.

Strike: "then held"

Insert: "that was"

7. Page 3, line 16.

Following: "lease"

Insert: "on [the effective date of this act]"

8. Page 3.

Following: line 16

Insert: "(2) The lessee requesting the sale shall have prepared a current certificate of survey for the property. The cost of preparation of the certificate of survey must be included in the settlement for improvements, as provided for in 77-2-325, if a person other than the lessee is the purchaser."

Renumber: subsequent subsections

9. Page 3, line 18.

Strike: "AN EXISTING"

Insert: "a"

10. Page 3, lines 19 and 20.

Following: "LAWS"

Strike: "." on line 19 through line 20 in its entirety

Insert: ", except that the development of any new, replacement, or additional water supply or sewage disposal system on the property must be approved pursuant to the review procedure, fee, and other requirements of Title 76, chapter 4, part 1."

11. Page 4, line 4.

Strike: "77-3-101"

Insert: "77-2-101"

Strike: "77-3-106"

Insert: "77-2-106"

12. Page 4.

Following: line 6

Insert: "NEW SECTION. Section 4. Conservation easement for certain sales. As a condition of any sale initiated pursuant to [section 3], the board shall, if consistent with its trust responsibility, grant to the state of Montana a conservation easement, as provided for in 76-6-203, for the leased cabin or home site or city or town lot to be sold. The conservation easement must run with the land in perpetuity and must:

(a) prohibit subdivision of the land;

(b) for property within 100 feet of a river, stream, or lake, prohibit the cutting of trees except as necessary for construction on the lot, fire prevention, safety, or protection of personal property; and

(c) require that any permanent structure be set back 25 feet from the high-water mark of a lake or stream."

Renumber: subsequent sections

13. Page 4.

Following: line 12

Insert: "Section 6. Section 77-2-324, MCA, is amended to read:

"77-2-324. Preference to lessee of land. The lessee of the land need not make a higher bid than others, but he shall, ~~if bidding an equal amount,~~ have the option to match the high bid and be given the preference. If the lessee matches the high bid, bidding must be reopened to all bidders, with the lessee retaining the right of preference to match the ultimate high bid and be awarded the sale."

14. Page 4, line 18.

Strike: "and 4"

Insert: "through 5"

15. Page 4, line 21.

Strike: "and 4"

Insert: "through 5"

16. Page 4, lines ~~22~~ through 25.

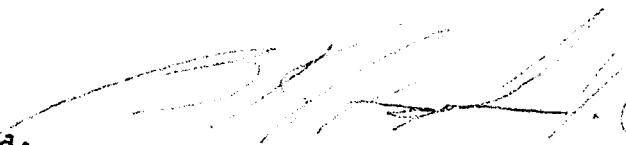
Strike: section 7 in its entirety

STANDING COMMITTEE REPORT

March 11, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report that SENATE BILL 371 (third reading copy -- blue) be concurred in .

Signed: 
Bob Raney, Chairman

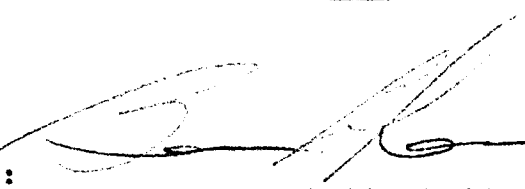
[REP. GIACOMETTO WILL CARRY THIS BILL ON THE HOUSE FLOOR]

STANDING COMMITTEE REPORT

March 11, 198

Page 1 of

Mr. Speaker: We, the committee on Natural Resources report that SENATE BILL 385 (third reading copy -- blue) be concurred in as amended .

Signed: 

Bob Raney, Chairman

[REP. DAVE BROWN WILL CARRY THIS BILL ON THE HOUSE FLOOR]

And, that such amendments read:

1. Page 4, line 4.

Strike: "AND"

2. Page 4, line 9.

Following: "and"

Insert: "; and"

3. Page 4, line 10.

Following: "product"

Insert: "any petroleum product"

4. Page 5.

Following: line 25

Insert: "(9) "Petroleum product" includes gasoline, crude oil (except for crude oil at production facilities subject to regulation under Title 92), fuel oil, diesel oil or fuel, lubricating oil, oil sludge or refuse, and any other petroleum-related product or waste or fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute)."

Renumber: subsequent subsections

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

TESTIMONY ON
SB 390

The DNRC supports SB 390 because it allows the sponsors of the Roundup abandoned coal mine pumping project the ability to proceed with the project if they can secure all other necessary permits and authorizations. In supporting SB 390, DNRC does not pre-judge the action the agency will take on the interim permit before it now, or the action it will take on any future interim permit application for this project.

The water users along the Musselshell River have faced chronic water shortages not just in the drought year of 1988, but in many other dry years. In the late 1970s, the DNRC, in response to requests from Musselshell River water users, evaluated offstream storage sites in the basin. Water users felt the cost of storage identified in that analysis to be beyond their capability to pay for water.

THE PROJECT

Local citizens then proposed the concept of pumping from the abandoned underground coal mines near Roundup. Preliminary studies indicate that the mines may be a source of water that could help alleviate water shortages in the Musselshell River.

The 1987 Legislature provided RIT funds to the Lower Musselshell Conservation District to pursue development of the

abandoned mines. The legislature also approved any interim permit necessary for test pumping of these mines. The legislature made it clear that the project sponsors would have to secure DNRC approval of the interim permit as required by statute.

The project is to proceed in four phases. Each phase must be approved by the DNRC before the next phase can proceed.

Phase 1. Compilation of a resource evaluation that addresses concerns such as:

- (a) subsidence
- (b) geology, hydrology, water quality, historic mining activities
- (c) well and spring inventory
- (d) installation of observation wells
- (e) selection of a pumping site
- (f) acquisition of all necessary permits

Phase 2. Completion of experimental short-term pumping. The DNRC has before it the interim application for this test pumping of up to 31 acre-feet over a seven-day period. If the permit is issued, it will be heavily conditioned to protect against injury to existing water users as well as addressing other concerns of local citizens.

Phase 3. Completion of a longer-term pumping test. The interim permit required for this pump test is the subject of SB 390. The purpose of the test is to evaluate the potential for withdrawing from the mine workings water of adequate quality and quantity to significantly supplement low flows in the Musselshell River. Two 90-day pumping events are proposed for successive years, each at a maximum of 30 cubic feet per second up to 5,500 acre-feet.

Phase 4. Development of a computer model based on data collected during the first three phases to assess storage capacity and recharge characteristics of the mines, to evaluate the quality of mine water and its compatibility with existing and proposed uses, and to determine the economic feasibility of using storage in the mines on a long-term basis.

WATER PERMITTING ACTIVITY

In September 1986, the Deadman's Basin Water Users Association filed a provisional water use permit application for 40 cfs up to 13,363 acre-feet/year from the abandoned coal mines. Because the groundwater appropriation under the permit could exceed 3,000 acre-feet, legislative approval was required. The 1987 Legislature passed SB 151, which authorized DNRC to issue only an interim permit for testing purposes. Any interim permit issued will expire on September 30, 1989, as provided in SB 151. Further testing involving withdrawals of more than 3,000 acre-feet/year will require legislative approval. SB 390 represents

DATE 3-10-89
HB SB 390

that approval. In the meantime, action on the water right permit application filed in 1986 has been suspended pending the completion of the four phases of the project.

A Preliminary Environmental Review will be prepared for each permit and interim permit application. AN EIS may be necessary, depending on the findings contained in the PER. Each interim permit, if issued, will contain conditions designed to prevent adverse impacts to existing users. In the event the conditions cannot be met or certain allowable limits are exceeded, no further pumping will be allowed.

PROJECT OPPOSITION

A group called "POWER" (Protect our Water and Environmental Resources) has formed to oppose the mine pumping project. Its main concern is that withdrawal of water from the mines will adversely impact both the quantity and quality of groundwater that presently supports residential and agricultural developments overlaying and adjacent to the mines. As indicated, if the DNRC feels that these concerns are valid, the necessary permits will not be issued. If water permits are issued, they will be conditioned to ensure that adverse impacts do not occur.

DEPARTMENT POSITION

The DNRC supports SB 390 because it would allow the project sponsors to apply for necessary permits and authorization to put

EXHIBIT 1
DATE 3-10-87
HB SB 390

their project in place. Passage of SB 390 does not guarantee the project will be implemented.

DNRC supports the concept of phasing the project such that the project, at any phase, can be halted if it is determined that it would cause adverse impacts to water users, excessive environmental impacts, or is technically or financially unfeasible.

Natural Resources Committee - Bob Barry

DATE 3-10-89

Name

RAYMOND RATHS

HB SB 390

REPRESENTING RANCH OF ESTATE OF
WICK RATHSFROMSOUTHWEST OF ROUNDUP, MT
IN AREA POTENTIALLY AFFECTED
BY MINE PUMPING

WE ARE MEMBERS OF DEADMAN'S BASIN
WATERUSERS WHICH PROJECT WOULD
PRESUMABLY BENEFIT

WE FEEL THE POTENTIAL FOR DAMAGE
TO DOMESTIC AND STOCKWATER WELLS AND
SPRINGS IN THE AREA SURROUNDING
THE OLD MINE WORKINGS FAR OUTWEIGHS
ANY BENEFITS THAT WOULD BE GAINED
BY USING THE WATER FROM THESE MINES
FOR IRRIGATION.

THE WASTEFUL USE AND ABUSE OF WATER
FROM DEADMAN'S BASIN SHOULD BE TAKEN CARE
OF BEFORE LOOKING FOR NEW SOURCES.

PROBLEMS WITH THE PUMPING MAY NOT
SHOW UP FOR YEARS THEN THE QUESTION
OF WATER WOULD BE FOR WATER OWNERS
RATHER THAN ON THE DEADMAN'S BASIN
WATERUSERS.

LET'S CLEAN UP THE OLD MINE AND
LOOKING FOR MORE WATER.

EXHIBIT 2
DATE 3-10-89
HB SB 390
for fall

WITNESS STATEMENT

NAME RAYMOND RATHS BILL NO. SB 390

ADDRESS ROUNDUP MT

WHOM DO YOU REPRESENT? POWER, & SELF

SUPPORT _____ OPPOSE ✓ AMEND _____

COMMENTS: I represent ranch that is a member of
the Deadman's Basin Waterusers Association
and I oppose this bill because the potential
for damage from the mine pumping far outweighs
any beneficial use. Too many domestic and
stockwater wells exist now in the area drained
by near the old mine workings. Let the
Deadman's Basin Waterusers clean up their act
on misuse and waste of the water they
have now before they go looking for more

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

OBJECTION TO SENATE BILL 390 (PUMPING THE MINES AT ROUNDUP)

3-10-89

SB 390

J. J. Hall

1. DEADMANS RESERVOIR was designed to hold 57,000 acre feet of water.
2. DEADMANS RESERVOIR was completed in 1942.
3. DEADMANS RESERVOIR was modified in 1958 to hold 80,000 acre feet.
4. The inlet to the reservoir (starting with a dam and 2 six foot square concrete conduits crossing under the hiway and continuing the 12 mile journey via an open canal averaging 7 ft. in depth and 18 ft. in width at the bottom) was supposed to fill the reservoir in 80 days flowing at 75% capacity.

75% of 650 cfs = 487.5 cubic feet per second flow
 = 967.3 acre feet per day
 80 day fill = 77,410.464 acre feet of water

5. The Deadmans Water Users Association buys 25,918 acre feet of water from the D.N.R.C.
6. WHERE IS THE OTHER 54,082 acre feet of water ???????

Obvious conclusion; THE IRRIGATORS ARE USING MUCH MORE WATER THAN THEY PAY FOR AND THEY WANT MORE!!!!

7. The Deadmans Water Users Association Committee meeting of 29 Jan. 86 as reported by John Rouan Jr. District Conservationist (copy enclosed) addresses some of their problems.

THEIR SOLUTION (!) PUMP THE MINES AT ROUNDUP !!!!!

May I suggest a few ideas?

1. Enlarge the headgate/dam and add another conduit, to move water more quickly during spring run-off.
2. Enlarge and line the canal to handle more water while available and get all off the water to the reservoir.
3. Reserve enough water for recreation purposes, DNRC has a fiduciary responsibility to all citizens of the state and with up to 54,082 acre feet of water over what they sell to the irrigators, there should be enough for all.
4. Make the DNRC charge the irrigators for all the water they use.
5. Do not let the DNRC continue their pursuit of doubtful water reserves from the coal mines, when their engineers talents would be of much more value in other areas.
6. THE MONTANA DEPARTMENT OF NATURAL RESOURCES & CONSERVATION received two protests on mine pumping in May 1987. One from the Department of State Lands on 13 May and one from the Department of Fish, Wildlife and Parks on 14 May - - that I am aware of.
7. 500 plus property owners, residents-voters-signed a petition against pumping the mines for irrigation.
8. A County Commissioner lost his bid for State Representative from this area, last election; he appeared before the last legislature and was instrumental in getting the first two year mine pumping permit bill passed.

PLEASE DO NOT PASS SB 390. IT IS NOT A GOOD BILL FOR THE MUSSELSHELL

CC NATURAL RESOURCES Chairman Bob Raney
 Vice Chairman Ben Cohen
 and all members of the committee

Vern J. Jones
4200 Baker Dr.

Deadman's Waterusers Committee
Meeting January 29, 1986

EXHIB 3
DATE 3-10
HB SB390

The second meeting of the Deadman Waterusers Committee met in Roundup at 1:00 p.m. January 29, 1986 at the SCS Conference room. See the attached list of those present. The group reviewed the minutes of the previous meeting. No corrections or adjustments were made.

The By-laws of the Deadman's Waterusers Association were reviewed. Sections were read and discussed as they may pertain to recommendations or guidelines that may be suggested by this committee. It was noted that an amendment to by-laws was made in 1981 by the board of directors. The amendment required review by board for transfer of use of water from one area to another. Should such change have an adverse affect to the association or its members, the application shall be denied. As any amendments to by-laws requires approval by DNR&C as well as members of association. It is currently not known if this amendment is valid. It should be reviewed with DNR&C records to determine if such action was finalized. Minutes of the regular annual meetings may be another source of information.

The shareholders list is available. The usable capacity of the reservoir is 72,200 acre feet of storage. The shareholders list indicates near 26,000 shares (acre feet) of storage water purchased. Sam Rodriguez presented preliminary findings as a result of the Moratorium proceedings initiated by some of the waterusers in the valley. In a lot of cases more irrigation is being done than the amount of contracted water could possibly allow. This will have to be addressed before any results can be expected from the moratorium?

Releasing more water than is necessary is another occurrence early in the irrigation season. At certain times no more permits should be allowed for full season irrigation. The DNR&C may have to go back and look at those already issued. If individuals have no other water than from contract, it may be advisable for them to file for permits for early season water. Otherwise it will be necessary that water be released from the Basin to satisfy these requests. February 13 is the date expected to complete their study. Public hearings will be held in the area to review results and take comments.

John Dalton, SCS irrigation specialist and Ken Peterson, SCS, Engineering technician commented on field efficiencies as they currently find them throughout the area and state. It is quite common for field efficiencies to be about 25-30%. Dalton also reviewed various types of measuring devices that are available and costs relative to each.

Emergency plan ideas were then discussed listing various ways to improve efficient, equitable delivery of water to the users.

- Items included:
1. Install measuring devices
 2. Split the river into zones and rotate available water supply.
 3. Sprinklers would also be subjected to similar zoning restrictions based upon % of shares contracted and estimated water available.
 4. Refine the zoned areas according to % of contracted shares (irrigated acres)
 5. Deliver a percentage of stored water to the zones and let the neighbors handle rotation.
 6. Continue to emphasize irrigation water management and develop an effective information and education program.
- March 23, 1986 Irrigation Workshop, Eastern Montana College Science and Arts building. Example of type program that needs support.

January 29, 1986

page 2

DATE 3-10

HB SB 390

Establishing a rotation system proportionate to contracted water was an acceptable solution. Barriers to this type planning included: 1) Type irrigation system could be inequitable ie. sprinklers are efficient but need close to constant use during peak irrigation season. They should be entitled to proportionate share of water and continue until that supply is exhausted. 2) Manpower is needed for implementation of the plan. 3) There is currently no teeth to enforcing such plans. 4) communication channels need to be improved to inform water users of the most current situation. 5) It has to be determined when an emergency exists? 6) the plan needs to have some leadership assignments or it will not get developed.

The primary needs or activities were determined and members were assigned to develop that portion of the plan prior to March 3 meeting. Zone Establishment Group - Ken Minnie, Chairman; other members Alexander Russell, Lestley Foster, Gordon Eklund, Jess Garfield. Meeting at 1:00 p.m. February 3, SCS office.

Implementation, Communication and Education Group - Bud Hjervik, Harold Eliasson, Gerald Harper and John Rouane.

Emergency Determination Group - Tom Hougen, Jim Jensen, Walter Wilkens, and Mike Gottena.

Members not on a committee may assist wherever they see fit. No additional assignments were made, but it was emphasized that time is getting short if such plans are to be developed for this season. Meeting adjourned at 3:00 pm

Next meeting is set for March 3, 1986. Committees should be prepared to give their reports.


John Rouane, Jr.
District Conservationist

Guest Editorial

The opinions expressed herein are those of the author and do not necessarily represent those of the editors and publishers of the Roundup Record-Tribune.

By Lowell A. Rathbun

Public Information Director

P.O.W.E.R.

STATEMENT BY POWER

12-19-88

According to Mr. Doug Parrott, Chairman of "Water Development Committee," Deadman's Basin Waterusers Assoc. (Roundup Record Tribune 3-4-87): "In recent years studies have been made to determine if additional water could be stored along the Musselshell River -- studies identified sites along the river which could be developed." Explaining that the cost of development of said sites was prohibitive he then indicated that "the abandoned coal mines represent a potential reservoir of somewhere between 11,000 to 40,000 acre feet.

On Feb. 11, 1987, readers of the Roundup Record Tribune were led to believe that 11,000 acre feet per year could be extracted from the mines "which have a direct connection to the river and are filled with water during spring floods." However, on March 4, at Helena several residents found that instead of proposing to store water in the mines, the Deadman's Basin Waterusers Assoc. had already expedited Senate Bill 151, authorizing a permit to appropriate ground water in the amount of 13,000 acre feet annually to the Assoc. After hearing proponents and opponents of S.B. 151 the house committee proposed amendments which would revise legislation to interim status and require liability responsibility by the Deadman's Basin Waterusers Assoc. On March 24, a joint Senate-House committee approved the amendments, after eliminating the Deadman's Basin Waterusers Assoc liability clause.

Consequently opponents of the water rights legislative action circulated a protest petition which was submitted to Senator Galt and Representative Holliday with over 240 signatures on March 16. Also on April 6, opponents formed the "Protective Organization For Water and Environmental Resources" and circulated a new petition bringing the protest signatures to over 500 persons protesting the proposed project.

On April 22, the D.N.R.C. published a formal public notice of Deadman's Basin Waterusers Assoc. water rights application setting May 14, as the dead line for receiving formal objections. Although substantial numbers of objections were properly filed by residents and water rights owners, the D.N.R.C. failed to hold a public hearing within 60 days, as required by Montana Code (85-2-309)

(As a reminder of how much water 13,000 acre feet per year is, as stated in the Roundup Record Tribune on Feb. 11, -- the equivalent of two sections of land, 1,280 acres 10 feet deep or 805 small wells pumping at 10 gallon per minute continuously 24 hours a day for a year!)

PROJECT COSTS

Perhaps the least understood aspect of this proposed project is the estimated project cost and sources of funding. Originally stipulated to total \$343,280 this total now appears to be \$506,100 of which \$427,900 will go to contract administration and professional services, principally personnel of the D.N.R.C., Montana Bureau of Mines & Geology and United States Geological Survey. Of the \$119,200 estimated for drilling, casing and construction costs \$96,410 will go for well drilling, casing pump rental and electricity all of questionable economic benefit to the community.

EXHIBIT

DATE 3-10-89

HB 5B390

LIABILITY RESPONSIBILITY

From the beginning of the water rights legislation to the agreement between D.N.R.C. and the Lower Musselshell Conservation District project sponsor, the liability responsibility is unclear and may only be determined by the court. It is evident that none of the state or federal agencies wish to accept that responsibility, particularly the subsidence damages which are bound to occur according to a letter to the D.N.R.C. by Mr. Juntunen, Chief Abandoned Mine Reclamation Bureau, dated April 25, 1988 who in reference to identity and liability states in part, "It is known that there is now active subsidence in the area, and it is known that the pumping activities will accelerate subsidence." It is also clear that the Deadman's Basin Waterusers Assoc. does not want the liability responsibility as evidenced by the legislative amendment action and designating Lower Musselshell Conservation District as project sponsor. By wording of the agreements (probably prepared by the D.N.R.C.) it does appear that the intent is to place liability responsibility on the Lower Musselshell Conservation District, project sponsor, a political subdivision consisting of all the rural property owners of Musselshell and Golden Valley Counties. Are these property owners aware of and agreeable to tax liabilities that could occur because of the proposed pumping project?

CONCLUSION BY P.O.W.E.R.

It is and has continued to be the determination of members of Protective Organization for Water and Environmental Resources that:

- (1.) Proposed pumping of groundwater from abandoned mines, either on an interim or permanent basis will undoubtedly deplete existing groundwater sources of residents, ranchers and wildlife needs.
- (2.) The proposed project is not wanted as evidenced by overwhelming numbers included in protest petitions.
- (3.) The proposed procedure as stipulated by Montana and environmental protection laws, including the required public hearing have not been adhered to by the D.N.R.C.
- (4.) The proposed project is a horrendous waste of public funds for the economically questionable and controversial concept principally benefitting personnel of various state and federal agencies.
- (5.) The probable project damage liability is high risk and should not be thrust on property owners of Musselshell and Golden Valley Counties.
- (6.) The funds now being proposed for this ridiculous project could and should be reallocated to the planning and design of a logical surface storage reservoir along the river, to capture and beneficially use excess flood waters for irrigation, recreation, wildlife restoration and flood control.

Feb. 17, 1989
Houndup, Mont.

EXHIBIT 5
DATE 3-10-89
HB SB 390

Capitol Station
Helena, Mont.

Rd: S.B. 390
Jack Galt

To whom it may concern:

We, the "Protective Organization for Water Environmental Resources," are sending you (each one on the House Agriculture Committee) a packet of information relevant to SB 390, by Jack Galt.

We have attempted to cover our reasons for objecting to the original SB 151, which is now a law and now SB 390 which extends the time of said law for 2 years.

Our neighboring states (17 western states) have a ground water study that is trying to find a way to artificially recharge the areas that have been literally mined out. Some of those states were supposed to have a groundwater reserve that couldn't be used up. They now have a different outlook, and no groundwater.

A copy of the original Petition Opposing Pumping and Appropriation of abandoned mine waters for Irrigation Purposes has been sent to Chairman John Vincent. This carries approximately 500 signatures.

Enclosures:

- I. MINE PUMPING OPPONENTS OUTLINE THEIR CONCERNS
- II. GUEST EDITORIAL, Statement by the P.O.W.E.R. group
- III. LETTER FROM ABANDONED MINE RECLAMATION BUREAU (Gary Fritz, DNRC, stated at Senate Agriculture Committee hearing, the Deadman's Basin Water Users' must accept all liability for damages from the tests and pumping activities.
- IV. Letter to Rich Brosch from attorney (Preliminary Environmental Review)
- V. COAL MINE INSPECTORS COMMENTS--mine information (Irvin Dodds, the pre-shift mine examiner for this area and Kelly Stephenson, passed State Coal Mine Inspector and underground coal miner have never been contacted by any government or state office.

Our members would like to be notified, as soon as possible, of the hearing in the House Agriculture Committee.
Phone: Villa Dale Evans--323-1677, Virgil Jones--323-1535
Kelly Stephenson--323-2477.

Thank you.

Kelly Stephenson

Mine pumping opponents outline their concerns

Editor's Note: In last week's Roundup Record-Tribune was an article submitted in support of the idea of pumping water out of abandoned coal mines in the Roundup area to supplement Musselshell River irrigation water. Opponents of the idea asked for an opportunity to present their views. The following article was delivered to the Record-Tribune offices by Mr. Lowell Rathbun, a representative of that group.

In response to the article recently submitted to the Roundup Record-Tribune by Mr. Doug Parrott, Chairman of the Water Development Committee, Deadman's Basin Water Users Assn., as "facts to dispell rumors" regarding legislation being requested from the State legislative bodies to appropriate substantial new water rights for irrigation purposes in the Lower Musselshell Conservation District, we submit for your reader's consideration the reason for local ranchers and residents proper and legitimate concern.

First of all, we are not now and never have been opposed to any project or endeavor by citizens of the community which would benefit a large segment of the City of Roundup or residents of the County providing the project does not infringe on the rights and needs of other residents to carry on their various established occupations, businesses and livelihoods. As everyone knows, especially in an arid climate such as ours, an adequate and dependable water supply for primary ranch, residential and business usage is absolutely essential. This is the principal reason for our concern.

As stated by Mr. Parrott, "In recent years studies have been made to determine if additional water could be stored along the Musselshell River. These studies identified sites along the river which could be developed for additional storage." This type of planning by the Irrigation Water User's Association certainly appears to be logical and fitting to address future needs. However, as noted by Mr. Parrott, "the costs of developing these off-stream storage sites is prohibitive in light of the crops that can be reasonably grown in this area given the average

climate and growing seasons." Consequently attention was focused on the potential of water storage in existing abandoned coal mines of the Roundup area. Record-Tribune readers were led to believe that the Deadman's Basin Water User's plan was to extract water "from the mines which have a direct connection to the river and are filled with spring floods" (February 11, 1987 issue).

Since that time much concern arose when we learned that apparently instead of storing and extracting river water from those abandoned mines, the actual proposal being submitted was to use existing ground water sources in the mines. These concerns were profoundly confirmed when several ranchers and residents traveled to Helena on March 4th to find that Senate Bill 151 had already been passed by that legislative body authorizing a "permit to appropriate ground water in the amount of 13,000 acre feet annually as requested by the Deadman's Basin Water User's Association. Nothing in this Bill (see attached copy, SB 151-please print for readers) made reference to or even inferred that the water extraction was to come from storage of Musselshell River water. The language of this legislation was then clearly "to appropriate ground water," which in effect would constitute a new water right and source in the amount of 13,000 acre feet annually to come from the Musselshell County ground water sources. On the same date SB 151 came before a Committee of the Montana House of Representatives at which time we voiced our objections to the legislation as proposed.

Why are we concerned about legislation which will permit the extraction of 13,000 acre feet annually from Musselshell County ground water supply? At first glance, the pumping of existing water from abandoned mines may appear to be of no consequence as to effect upon local water supply. If you accept Mr. Parrot's "fact" as claimed in the Record-Tribune of March 4th that "historical data on wells and springs in and around the mine area have shown no effect on water tables, one way or the

other, prior to, during or after mining and pumping operations" as indisputable, you may agree. We do not believe that this claim can be established. In fact, we have been advised by old time residents of the County that the long term effect of pumping and wasting this ground water into the Musselshell did indeed change the flow of various springs and wells in the nearby watersheds. In fact, to claim that long term extraction of substantially high ground water quantities from the coal mining areas will have no adverse effect on surrounding water supply wells and springs is quite contrary to simple principles of ground water hydrology which everyone can logically understand. Residents of the County are well aware that climatic trends of considerable duration such as an extensive drought period are directly reflected in the varying supply of water from various wells and springs. Dropping water tables (elevation of the water at the source) are the inevitable result of extended drought conditions or excessive extraction from the water supply basin. Upstream (underground) water supply will also diminish as increased flow through existing aquifers result from excessive pumping in lower water basins.

Perhaps the easiest way to understand the amount of groundwater proposed to be pumped from the Roundup basin area is to describe the quantity of acre feet in simple terms. An acre foot is 43,560 cubic feet or approximately 326,000 gallons. Thus, 13,000 acre feet annually would be more than enough water to cover two sections of land (1280 A.) to a depth of 10 feet. Relative to small water wells pumping continuously at the rate of 10 gallons per minute (gpm), 24 hours a day, 365 days a year, the equivalent of 805 wells.

Ranchers and other residents of the County who depend on limited water supplies of existing wells and springs have a legitimate and real reason to be concerned about the long range effect of large scale extraction of ground water from the Musselshell County basin. We have no surface storage basins for reserve to augment our supply. Our only source is ground water which is already limited by existing inadequate natural underground storage areas, varying climatic conditions and continuing growth of the area.

In perspective, we have considerable rational reason to believe that implementation of a project to extract large quantities of existing ground water (rather than storing and extracting available river water) from the abandoned coal mine areas will diminish and eventually deplete much of the limited natural ground water supply of adjacent Musselshell County drainage areas to the detriment of many ranchers and other residents.

We believe that we and others like us comprise the substantial majority of City and County residents, the property owners and taxpayers, and economic business contributors of all Musselshell County. We have and will continue to devote much of our time and talent to any viable endeavor that will contribute to improved progress of the community including good water supply improvements whenever possible. Such goals should be reasonable, realistic and fair to all involved or affected by the work.

LOWELL RATHBUN, NICK T. RATHS, ED SPIDEL, KELLY STEPHENSON, VIC STEPHENSON

EXHIBIT
DATE 3-10-85
HB 58390

The opinions expressed herein are those of the author and do not necessarily represent those of the editors and publishers of the Roundup Record Tribune.

By **Lowell A. Rathbun**

Public Information Director

P.O.W.E.R.

5
DATE 3-10-89
HB SB 390

STATEMENT BY POWER
12-19-88

According to Mr. Doug Parrott, Chairman of "Water Development Committee," Deadman's Basin Waterusers Assoc. (Roundup Record Tribune 3-4-87): "In recent years studies have been made to determine if additional water could be stored along the Musselshell River -- studies identified sites along the river which could be developed." Explaining that the cost of development of said sites was prohibitive he then indicated that "the abandoned coal mines represent a potential reservoir of somewhere between 11,000 to 40,000 acre feet.

On Feb. 11, 1987, readers of the Roundup Record Tribune were led to believe that 11,000 acre feet per year could be extracted from the mines "which have a direct connection to the river and are filled with water during spring floods." However, on March 4, at Helena several residents found that instead of proposing to store water in the mines, the Deadman's Basin Waterusers Assoc. had already expedited Seante Bill 151 authorizing a permit to appropriate ground water in the amount of 13,000 acre feet annually to the Assoc. After hearing proponents and opponents of S.B. 151 the house committee proposed amendments which would revise legislation to interim status and require liability responsibility by the Deadman's Basin Waterusers Assoc. On March 24, a joint Senate-House committee approved the amendments, after eliminating the Deadman's Basin Waterusers Assoc liability clause.

Consequently opponents of the water rights legislative action circulated a protest petition which was submitted to Senator Galt and Representative Holliday with over 240 signatures on March 16. Also on April 6, opponents formed the "Protective Organization For Water and Environmental Resources" and circulated a new petition bringing the protest signatures to over 500 persons protesting the proposed project.

On April 22, the D.N.R.C. published a formal public notice of Deadman's Basin Waterusers Assoc. water rights application setting May 14, as the dead line for receiving formal objections. Although substantial numbers of objections were properly filed by residents and water rights owners, the D.N.R.C. failed to hold a public hearing within 60 days, as required by Montana Code (85-2-309)

(As a reminder of how much water 13,000 acre feet per year is, as stated in the Roundup Record Tribune on Feb. 11, -- the equivalent of two sections of land, 1,280 acres 10 feet deep or 805 small wells pumping at 1 gallon per minute continuously 24 hours a day for a year!)

PROJECT COSTS

Perhaps the least understood aspect of this proposed project is the estimated project cost and sources of funding. Originally stipulated to be \$343,280 this total now appears to be \$506,100 of which \$427,900 will go to contract administration and professional services, principally personnel of the D.N.R.C., Montana Bureau of Mines & Geology and United States Geological Survey. Of the \$119,200 estimated for drilling, casing and construction costs \$96,410 will go for well drilling, casing pump rental and electricity all of questionable economic benefit to the community.

LIABILITY RESPONSIBILITY

From the beginning of the water rights legislation to the agreement between D.N.R.C. and the Lower Musselshell Conservation District, project sponsor, the liability responsibility is unclear and may only be determined by the court. It is evident that none of the state or federal agencies wish to accept that responsibility, particularly the subsidence damages which are bound to occur according to a letter to the D.N.R.C. by Mr. Juntunen, Chief Abandoned Mine Reclamation Bureau, dated April 25, 1988 who in reference to identity and liability states in part, "It is known that there is now active subsidence in the area, and it is known that the pumping activities will accelerate subsidence." It is also clear that the Deadman's Basin Waterusers Assoc. does not want the liability responsibility as evidenced by the legislative amendment action and designating Lower Musselshell Conservation District as project sponsor. By wording of the agreements (probably prepared by the D.N.R.C.) it does appear that the intent is to place liability responsibility on the Lower Musselshell Conservation District, project sponsor, a political subdivision consisting of all the rural property owners of Musselshell and Golden Valley Counties. Are these property owners aware of and agreeable to tax liabilities that could occur because of the proposed pumping project?

CONCLUSION BY P.O.W.E.R.

It is and has continued to be the determination of members of Protective Organization for Water and Environmental Resources that:

- (1.) Proposed pumping of groundwater from abandoned mines, either on an interim or permanent basis will undoubtedly deplete existing groundwater sources of residents, ranchers and wildlife needs.
- (2.) The proposed project is not wanted as evidenced by overwhelming numbers included in protest petitions.
- (3.) The proposed procedure as stipulated by Montana and environmental protection laws, including the required public hearing have not been adhered to by the D.N.R.C.
- (4.) The proposed project is a horrendous waste of public funds for the economically questionable and controversial concept principally benefitting personnel of various state and federal agencies.
- (5.) The probable project damage liability is high risk and should not be thrust on property owners of Musselshell and Golden Valley Counties.
- (6.) The funds now being proposed for this ridiculous project could, and should be reallocated to the planning and design of a logical surface storage reservoir along the river, to capture and beneficially use excess flood waters for irrigation, recreation, wildlife restoration and flood control.

EXHIBIT 5DATE 3-10-89

DEPARTMENT OF STATE LANDS

HB# SB 390

RECEIVED

APR 27 1989



TED SCHWINDEN, GOVERNOR

STATE OF MONTANA

(406) 444-2074

MONT. DEPT. of NATURAL
RESOURCES & CONSERVATION1625 ELEVENTH AVENUE
HELENA, MONTANA 59600

April 25, 1988

Mr. Les Pederson
Water Development
DNRC
Helena, MT. 59601

RE: Lower Musselshell Project

Les:

I have reviewed the draft document entitled "Ground Water From Abandoned Mine Workings for Irrigation and Instream Flows, Lower Musselshell River".

As you know, my staff and I have written several letters concerning the potential for increased or accelerated mine subsidence because of pumping activities in the abandoned mines. It is an accepted fact that water fluctuations in abandoned underground mines, as will occur with this project, are known to and logically will cause increased potential for mine subsidence.

With the above in mind, the draft agreement is inadequate to protect the state in case of catastrophic subsidence, i.e., road or dwelling collapse.

On page 4, "subsidence potential" is referenced under Literature search as a topic area. I would expand this into a separate and discrete item based on our existing understanding that shows subsidence to be a potential problem. They should be required to utilize all existing data to identify all existing data on subsidence potential. These data will have to be extrapolated from similar situations nationwide, since nothing specific will be found at the Roundup mines.

On page 30, Section 19. Indemnity and Liability, the statement is inadequate to protect the state agency since it is very likely that any damage or injury that occurred due to subsidence would not be as a result of error, omission, or negligent act. It is known that there is now active subsidence in the area, and it is known that the pumping activities will accelerate subsidence. What is not known is the extent or time frame. The beneficiary of the irrigation research must accept this liability and the state must clearly point out to the lower Musselshell Conservation District that they are accepting this liability and cost of reclamation.

In closing, the state must protect itself from potential lawsuits and costs due to subsidence on this project. Subsidence reclamation nationwide is costing hundreds of millions of dollars with no end in sight.

Sincerely,

Susan McNally for

Richard J. Juntunen, Chief
Abandoned Mine Reclamation Bureau

c: Gary Amestoy
Dennis Hemmer

IV

LAW OFFICES

MENAMER & THOMPSON, P.C.

TRANSWESTERN III BUILDING, SUITE 502

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P. O. BOX 7057

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CAROL K. FIELDS
MICHAEL R. BARROTT

EXHIBIT

5

DATE

3-10-89

HB

SB 390

January 9, 1989

Rich Brasch
Water Management Bureau
Department of Natural Resources
and Conservation
1520 East 6th Avenue
Helena, MT 59601

ATTN: R. Brasch

RE: Public Comments on Preliminary Environmental Review
Interim Water Use Permit Application No. 68183-40c

Dear Mr. Brasch:

The undersigned submits the following written comments as attorney for Alan D. Evans, 4300 U.S. 87 South, Roundup, Montana 59072. Mr. Evans is an affected landowner and holder of water rights located adjacent to the abandoned coal mines. By objection to application received by the Department on 5-12-87 Mr. Evans has objected to the issuance of a provisional permit being sought by the Deadman's Basin Water Association.

The Preliminary Environmental Review prepared on this matter is inadequate and in addition, before any permitting action is taken by the Department of Natural Resources an Environmental Impact Study should be prepared by the Department.

In this particular case, the Department's own rules indicate that an EIS is necessary because according to ARM 36.2.503(3)(a) the preparation of an EIS is required when the proposed action is one which may significantly affect environmental attributes recognized as being fragile or in severely short supply. Information available to the Department including water availability studies on the Musselshell River and personal testimony of water users adjacent to the abandoned coal mines indicate that the source of ground water in the immediate area is fragile and in severely short supply. In addition, subsection (c) of the same rule indicates that an EIS is necessary for those actions which may substantially alter environmental conditions in terms of quality or availability. As shown by other public comments the Department has information available to it which indicates that in previous years when the mines were dewatered for mining purposes impacts were felt on ground water

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sources many miles away from the mine mouth. Substantial concern has also been raised about the effect that even limited pumping may have on ground water quality including possible contamination with PCB.

Even if an EIS is not required, the PER itself is unsatisfactory as it does not address the possible environmental concerns related to issuance of the interim permit. Please note that ARM Section 36.2.504(b) requires "an evaluation of the immediate, cumulative and secondary impacts on the physical environment . . ." The phrase, cumulative impact is also defined in ARM 36.2.502(1) as incremental cumulation of impacts on the human environment of the proposed action when considered in conjunction with other past and present actions related to the proposed action by location or generic type. According to the rule related future actions must also be considered when these actions are under concurrent consideration by any state agency through pre-impact statement studies, separate impact statement evaluation, or permit processing procedures. Therefore, under the above-cited regulations, the Department must consider the impact of the proposed provisional permit as well as the proposed interim permit before the PERS constitutes compliance with the Montana Environmental Policy Act.

A review of the PERS and particularly the comments by the Department on the proposed action shows that the Department has (if anything) only commented upon the immediate impacts on the physical environment and has completely ignored any cumulative or secondary impacts on the environment which may occur as a result of issuing the interim permit.

In fact, the evidence before the Department indicates that the interim permit will have a substantial effect or that sufficient work has not been done in order to determine whether or not any effect will be felt.

It is well documented by the Department's own studies that the subject area has limited ground water. Indeed the Department has denied ground water applications on the basis of lack of supply. In addition, the area is heavily subdivided with large demands for domestic ground water use at the present time and in future years. The only evidence available concerning ground water use at the mine shows that when the mine was pumped during coal mining operations, springs and wells were affected many miles away from the mine site.

Any potential loss of domestic or stock ground water availability is extremely serious to the community. It is intrinsically obvious that unless domestic ground water is available the taxable value of

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Page 3

homestead sites scattered throughout the area south of Roundup will be immediately and seriously decreased. In addition, any decrease in stock water availability would have a serious effect on the personal income of stock-raisers in the community.

Ground water changes of any type will have a serious impact on the density and distribution of housing in the area. The PER also does not address the developing schism in the community between existing users of ground water for stock water and domestic purposes and irrigation users making claim to ground water resources.

An Environmental Impact Statement in this situation would insure compliance with the NEPA requirements. In an Environmental Impact Statement the underlying problems of ground water availability can be thoroughly analyzed. In addition, it can be determined what level of investigation is needed in order to comprehensively deal with concerns raised by objectors to the provisional permit application. For example, in objecting to the permit the Department of State Lands has raised questions of subsidence and the Department of Fish, Wildlife and Parks has raised questions of thermal "pollution." These issues should be addressed before any intrusive testing is done of the aquifer.

Although public comments on issuance of the interim permit have not been requested by the Department of Natural Resources, the undersigned also makes the following preliminary comments concerning the issuance of the permit.

The legal standard which the Department has chosen to use in determining whether or not the interim permit should be issued is incorrect. At the time that the provisional permit was applied for the relevant standard was that "the Department may not issue an interim permit unless there is substantial evidence that the criteria for issuing a regular permit under section 85-2-311, MCA will be met." In the interim the board has changed that rule and completely altered the proposed burden of proof stating that the Department may issue an interim permit unless there is substantial information available to the Department that the criteria for issuing a provisional permit under section 85-2-311, MCA cannot be met.

Although the legislature has granted broad discretion to the Board in the management of water resources, this discretion is not so broad as to allow the board to totally reverse the burden of proof in an interim permit proceeding. MCA Section 85-2-113(2) allows the board to adopt rules necessary to implement and carry out the purposes and provisions of this chapter. Throughout the Montana

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Water Use Act the burden is consistently placed upon the permit applicant to show that the applicant meets the criteria for issuance of the permit. The Department now says that under certain circumstances the burden shifts such that the objector must show that there is damage before a permit will not be issued. This rule is directly contrary to the letter and spirit of the legislation.

Under the circumstances, the Department should use the criteria set forth in the original rule stating that the applicant must show by substantial evidence that the criteria of MCA Section 85-2-311 will be met. Not only is this the rule that was in effect at the time the provisional permit application was made, but in addition, the earlier rule comports with the Water Use Act and its general burden of proof provisions.

In any event, the objectors to the provisional permit have shown by substantial evidence that the applicant will not meet the permit criteria of MCA Section 85-2-311. Essentially, the only credible and verifiable information before the Department is that during the periods that the mines were being pumped ground water springs and wells throughout the area were drastically affected. Under these circumstances, the objectors have shown that there is no water available in the source of supply and that the rights of previous users will be adversely affected by the issuance of the provisional permit.

In addition, there is other substantial credible evidence which shows that the provisional permit could not be issued to the Deadman's Basin Water Users Association. Under the Water Use Act the applicant is not the proper person to apply for this water right; it is actually the Department of Natural Resources and Conservation which holds the water rights used by Deadman's Basin Water Users Association. Since this application is for supplemental water rights, the application for these rights should be made by the Department of Natural Resources. The application by setting forth 16,000 acres of irrigated land clearly contemplates a consumptive use of over 4,000 acre feet per year. Under MCA Section 85-2-301, only the Department of Natural Resources may appropriate water by permit whenever water in excess of 4,000 acre feet a year is to be consumed.

Also, at the present time the undersigned is unaware of any authorization by the Board of Natural Resources and Conservation to the Department to acquire this water right. See, MCA Section 85-1-202. A complete application has not been filed by any entity because the fees for environmental impact statements under MCA Section 85-2-124 have not been submitted to the Department and

Rich Brasch
January 9, 1989
Page 5

because under MCA Section 85-2-310 the Department has not ordered the time extended for consideration of the provisional permit.

Finally, the application is not complete because it does not set forth a detailed project plan including, but not limited to, a reasonable time line for the completion of the project and the actual application of the water to beneficial use. This project plan is an absolute requirement under MCA Section 85-2-310(4)(c)(iii).

Since the objectors by substantial credible evidence have shown that ground water in the area is needed for present and future domestic and stock water uses the interim permit should not be issued. MCA Section 85-2-311 states that one of the criteria for obtaining a provisional permit of the amount sought by the applicant is that the applicant must show by clear and convincing evidence that the proposed use of water by the applicant is a reasonable use. In light of the strong need for domestic and stock water use the proposed irrigation use does not constitute a reasonable use of water as defined in the Montana Water Use Act.

The issuance of the interim permit is also improper because no termination criteria has been set by the Department with specific time allowed for public comment on the issuance of the interim permit. Indeed, under the circumstances, there are questions as to whether the test contemplated by the applicant will yield any beneficial information whatsoever concerning the amount and location of ground water. Under these circumstances the appropriation would not meet the test for beneficial use of water and would be specifically unauthorized under 85-2-301(1) which requires that the use of water be "beneficial."

In essence, the Department through the PER and the interim testing permit is trying to turn the Montana water permitting and environmental process on its head. The legislature has made specific findings concerning the minimum amount of ground water withdrawal above which a permit is needed. The legislature has also set forth specific criteria which in this case must be proven by an applicant by clear and convincing evidence before a permit can be issued. Although the board does have authority to issue interim permits, this authority is restricted in that it be in accordance with the general policy and provisions of the Water Use Act.

As shown by the objections to the provisional permit, there are serious questions regarding water quantity, water quality, social and economic affects, subsidence and other issues important to the community. However, in spite of the clear legislative directives concerning the permitting process and environmental compliance, the

Ex. 5

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Rich Brasch
January 9, 1989
Page 6

Department proposes through intrusive testing to try and determine first, whether the ground water resource will be harmed by certain, limited withdrawals. Instead, this should be the last step after the feasibility and other questions related to the permit can be resolved without intrusive testing of the resource.

Sincerely,

McHAHER & THOMPSON, P. C.
Attorneys for Alan D. Evans

By: _____
Peter T. Stanley

A COAL MINE INSPECTORS COMMENTS

EXHIBIT 5

DATE 3-10-89

HB. SB 390

UPON STUDYING THE REPORTS AND PROPOSED COAL MINE PUMPING BY THE BUREAU OF MINES, THERE IS VERY LITTLE TRUTH IN ANY OF THE STATEMENTS MADE ABOUT WORKED OUT AREAS. THERE IS NOT ANYONE IN THE BILLINGS OFFICE WITH ANY UNDERGROUND MINING EXPERIENCE OR KNOWLEDGE. IF THEY WOULD HAVE JUST STUDIED MONTANA MINING LAWS, THEY WOULD HAVE SEEN THAT WORKED OUT AREAS ARE NOT RESERVOIRS FOR STORING WATER.

(1.) THE TIMBERING THAT WAS REQUIRED TO SAFELY REMOVE THE COAL WOULD DETERIORATE IN A SHORT TIME AND THERE WOULD NOT BE ANY ROOF SUPPORT. THERE WILL BE ROCK FALLS IN ALL AREAS OF THE MINES.

(2.) VENTILATION IN THE MINES REQUIRED THAT TO KEEP AIR TO THE WORKING FACE, ALL WORKED OUT AREAS HAD TO HAVE ENTRANCES BLOCKED OFF, SO AIR COULD NOT ENTER. THESE AIR BLOCKS WERE CONSTRUCTED OF ROCK WALLS, FILLED BETWEEN WITH FINES TO STOP AIR MOVEMENT AND ANY WATER THAT DID ACCUMULATE, WOULD BE EFFECTUALLY DAMED OFF.

(3.) WITH THE COAL UNDER-LAID BY A CLAY BED, WITH ANY LARGE AMOUNT OF WATER ACCUMULATION THE CLAY WILL TURN TO MUD AND WITHOUT SOLID SUPPORT FOR THE PILLARS, A SQUEEZE WILL TAKE PLACE AND IN TIME WILL CLOSE ANY VOIDS LEFT BY REMOVAL OF COAL.

(4.) WITH THIS KNOWLEDGE, THE FACT THAT THE ENTIRE AREA HAS A DEFINITE ELEVATION GAIN FROM THE RIVER SOUTH, PROBABLY 30 FEET TO EVERY MILE AND DEFINATELY NOT LEVEL, AS THE BUREAU WOULD LIKE TO MAKE PEOPLE BELIEVE. (FACTS ARE THERE ISN'T ANY LARGE AREAS OF WATER STORED.)

(5.) IN THE AREA DIRECTLY SOUTH OF THE RIVER THERE COULD HAVE, AT ONE TIME, BEEN A FEW ROOMS AND ENTRIES THAT HAD WATER IN

5
DATE 2-10-89
HB. SB 390

THEM, BUT THE HISTORY OF SQUEEZE'S IN PRESCOT AND #3 MINES, IS THAT JUST A MATTER OF TIME UNTIL THE RESERVOIRS WILL BE GONE AND THE HAULAGE WAYS, USED TO REMOVE THE COAL, WILL BE BLOCKED BY ROCK FALLS.

(6.) THERE IS A POSSIBLE CHANCE THE MINING MACHINERY AND ELECTRICAL EQUIPMENT ABANDONED BY THE ROUNDUP COAL MINING CO. COULD HAVE BEEN WHERE WATER DID FILL IN THE AREA. WITH THE HAZARDOUS MATERIALS IN OILS AND OTHER ELECTRICAL EQUIPMENT PRESENT IT COULD AND PROBABLY WILL BE A VERY DANGEROUS FORM OF CONTAMINATION. ANY CIRCULATION OF THESE WATERS SHOULD NOT BE CHANGED.

(7.) IF ANY REAL STUDY HAD BEEN DONE OF THE ABANDONED MINES THE DANGER OF CONTAMINATING THE WELLS IN THE AREA, AND THE CHANCE OF MORE DAMAGE TO THE ROUNDUP WATER SUPPLY PLUS THE FACT THAT ABANDONED MINE WORKINGS JUST CAN'T BE RELIED ON FOR WATER STORAGE. BECAUSE OF THESE FACTS KNOWN THIS ENTIRE STUDY CAN'T EVER BE ANYTHING BUT JOB SECURITY FOR A GROUP OF BUREAUCRATS!!

Kelly Stephenson

VL

Pete and Rhonda Tully
75 Ranch Company
East Parriott Creek Rd
Roundup, Montana 59072

December 15, 1988

Dept. of Natural Resources and Conservation
Helena, Montana 59601

5
DATE 3-10-89
HB SB390

Attention: Rick Brasch

Re: Deadman's Basin Water Users Assoc. Application
for Test Pumping Water in the Bull Mountains

Dear Rick:

As landowners and ranchers in the Bull Mountains we are opposed to the Deadman's Basin Water Users Association application for a temporary water use permit. We object to the proposal of test pumping up to 10,080,000 gallons of water from abandoned coal mines near Roundup for the following reasons:

1. Any pumping of ground water for irrigation purposes (including stream flow enhancement, even a "test" pumping) presupposes that such water is in surplus, not claimed or in use by anyone.
 - a. This must be proven before any such pumping be permitted. (This has not been proven.)
2. Those proposing to conduct any pumping have no legal, logical, geological, historic, or moral claim to any amounts of ground water.
3. Ground water for domestic and livestock use has clear priority over any claim for irrigation or stream enhancement purposes.
4. Harmful effects of such pumping activity could be broadbased and long lasting without being readily apparent at the time of such test pumping, i.e. probable subsidence of watertable levels in surrounding wells and springs already established for domestic and livestock use. (Damage may be accrual rather than immediate and should be prevented.)

We respectfully request you take these comments under advisement and refuse any pumping of water from the abandoned coal mines in the Bull Mountains.

Sincerely,

P. R. Tully

Peter R. Tully

Rhonda Tully

Rhonda L. Tully

Robert R. Tully
Robert R. Tully, President

VII

BY LOWELL A. RATHBON
PUBLIC INFORMATION DIRECTOR

WHAT ABOUT P.C.B.?

ENCL. 5
DATE 3-10-89
HB 58390

OPINION BY P.O.W.E.R.

(PROTECTIVE ORGANIZATION FOR WATER AND ENVIRONMENTAL RESOURCES)

IN THE DEC. 28th ISSUE OF THE ROUNDUP RECORD TRIBUNE, OPINION EXPRESSED BY MR. KUZARA ABOUT THE PROBABILITY OF EXISTING SOURCES OF P.C.B. WHICH ARE A WELL DOCUMENTED DANGER TO HUMANS WHEN CARRIED IN THE WATER FOR CONSUMPTION FROM ABANDONED MINES IS A SERIOUS PROBLEM TO BE CONSIDERED--A POINT WELL TAKEN, HOWEVER, WE DO NOT AGREE WITH HIS CONCLUSION THAT THE WAY TO GET RID OF P.C.B. IS TO PUMP THE MINES OUT.

EXCEPT FOR A FEW KNOWN AND ACCESSIBLE LOCATIONS WHERE EQUIPMENT AND/OR TRANSFORMERS EXIST IT WOULD BE VIRTUALLY IMPOSSIBLE TO DETERMINE WHERE ALL OF THE P.C.B. SOURCES ARE IN THE GREAT LABYRINTH OF UNDERGROUND SHAFTS THROUGHOUT THE AREA. INSTEAD OF PANIC WE THINK THE ANSWER MAYBE LIES IN A MORE REALISTIC APPROACH.

FIRST OF ALL HIGH VOLUME PUMPING FROM THE MINES WILL UNDOUBTEDLY PRODUCE HIGH WATER VELOCITIES AROUND POSSIBLE SOURCES OF P.C.B. WHICH OTHERWISE WOULD REMAIN DORMANT. ALSO BECAUSE OF THE WINDING GRADES OF THE MINE SHAFTS, EXISTING SUBSIDENCE AND OTHER PROBLEMS, COMPLETE PUMPING WILL BE VIRTUALLY IMPOSSIBLE AS WELL AS IMPRACTICAL. SINCE MOST OF THE SMALL DOMESTIC PRIVATE WELLS THROUGHOUT THE AREA ARE UNLIKELY TO BE CONNECTED TO MINE SHAFTS AND THE TRIBUTARY WATER MOVES AT VERY LOW VELOCITY, P.C.B. SOURCES SHOULD BE UNDISTURBED. IF THE ABANDONED MINES (EXCEPT FOR SEALING ENTRANCES) ARE LEFT ALONE NATURAL SUBSIDENCE WILL EVENTUALLY SEAL OFF MOST P.C.B. SOURCES.

PERHAPS THE MOST DANGEROUS ASPECT OF MINE PUMPING IS THAT ONE OF THE TWO MAJOR ENVIRONMENTAL CONSEQUENCES OF THE RELEASE OF P.C.B. IS TOXICITY TO AQUATIC AND OTHER ORGANISMS, A BIOMAGNIFICATION PROCESS BEGINNING WITH MICROSCOPIC ORGANISMS IN STREAM BEDS INVOLVING A NATURAL FOOD CHAIN WITH P.C.B. CONCENTRATIONS (TOXICITY) IN FISH TISSUE RANGING FROM 3,000 TO 274,000 TIMES THE ORIGINAL CONCENTRATIONS IN THE STREAM OR STREAM SEDIMENT. PUMPING OF MINE WATERS INTO THE RIVER OR OTHER SURFACE DISCHARGES, EXPERIMENTAL OR OTHERWISE, WILL PROBABLY SET OFF THIS CHAIN REACTION IF P.C.B. CONTAMINATION IS INVOLVED.

IT IS OUR OPINION THAT MINE PUMPING WILL SIMPLY MAGNIFY THE P.C.B. PROBLEM (AND RESULTING LIABILITIES) AND AS STATED IN THE DEC. 21st. ISSUE OF THE ROUNDUP RECORD TRIBUNE, THE PROPOSED PUMPING PROJECT SHOULD BE SCRAPPED WITH THE \$506,000 "STUDY" FUNDING REALLOCATED TO THE PLANNING AND DESIGN OF A LOGICAL SURFACE STORAGE RESERVOIR ALONG THE RIVER FOR THE BENEFICIAL USE OF FLOOD WATERS FOR IRRIGATION, RECREATION, WILDLIFE RESTORATION AND FLOOD CONTROL. FURTHERMORE THE RESERVOIR WOULD HELP PROVIDE A CONTINUOUS RIVER FLOW OF BETTER WATER QUALITY WHICH ROUNDUP COULD UTILIZE BY DESIGNING AND CONSTRUCTING A MODERN WATER TREATMENT PLANT.

DATE 3-10-89
HB SB 390

VII

THIS IS VERY DIFFICULT TO WRITE, A REPORT OR SPEAK ON
BECAUSE I CAN'T BE PROUD TO BE A CITIZEN OF THE STATE OR AREA.

WHY DO MEMBERS OF OUR LOCAL GOVERNMENT LIE TO THE LEGISLATURE
"THE CHAMBER OF COMMERCE, COUNTY COMMISSIONERS ARE ALL FOR THE
PROJECT." A FEW ARE FOR, BUT NO VOTES WERE TAKEN. THOSE FEW SNEAK
UP TO HELENA AND SAY SO. WHY ARE WAYS TO CIRCUMVENT THE WATER LAWS
MADE TO PROTECT US DONE BY THE SAME AGENCY THAT WROTE THE LAWS
AND JUDGE THOSE LAWS?

THE OBJECTIONS FILED DON'T HAVE TO BE HEARD BECAUSE THIS IS
AN INTERIM STUDY. WHERE IS OUR RIGHT TO A FAIR TRIAL, WHEN THAT
AGENCY OWNS WATER, DEADMAN'S BASIN, DOES THE STUDY AND JUDGES THE
RESULTS OF THAT STUDY AND STANDS TO BENEFIT FROM IT. JUDGE, JURY
AND BENEFACTOR OR CONFLICT OF INTERESTS.

CAN I HAVE AN INTERIM PERMIT TO DO AS I WISH ON MY PLACE AS
LONG AS ME AND MY FAMILY LIVE?

I HAVEN'T HEARD ANYONE SAY THAT PUMPING WATER UPHILL 200
FEET AND DUMPING IT INTO A RIVER AS BEING AN ECONOMICAL METHOD OF
IRRIGATION. WHAT IS THE COST--\$30 PER ACRE FOOT.

SHORTAGE OF WATER--DEADMAN'S BASIN STORES MORE THAN IS
APPROPRIATED--15,000 ACRE FEET ENTERED THE DELPHIA CANAL. SO WHY
ISN'T THERE ENOUGH TO MEET THE APPROPRIATIONS? IS SOMEONE USING
MORE THAN THEIR SHARE? ARE THE DITCHES IN POOR CONDITION?

ADDING 13,000 ACRE FEET WON'T RECTIFY MIS-APPROPRIATION OR
FIX POOR DITCHES. A HOLE IN THE DITCH IS STILL A HOLE IN THE DITCH.
WITH THE SUPPOSITION THAT THERE IS 13,000 ACRE FEET OF WATER
AVAILABLE IN THE MINES. THAT MEANS THAT THEY'RE FULL AND ALL IS
AVAILABLE. IF THAT BE THE CONTENTION THEN ANY CONTAMINANTS IN THE
MINES ARE ALSO AVAILABLE.

3-10-89

IF PCB AND FURANS ARE PUMPED INTO THE MUSSELSHELL THEN THAT WILL TERMINATE THE SWIMMING, FISHING, HUNTING, LIVESTOCK AND FORAGE PRODUCTION ALONG THE LOWER MUSSELSHELL. PCB'S AREN'T WATER SOLUBLE BUT ADHERE TO SOIL PARTICLES. THEY ARE VERY FAT SOLUBLE AND CAN BE INGESTED, INHALED OR ABSORBED THROUGH THE SKIN. PCB DON'T BREAK DOWN, AT LEAST FOR DECADES AND THEY ARE ACCUMULATIVE-- MEANING THE MORE YOUR EXPOSED TO THE GREATER THE CONTAMINATION INTO YOUR BODY.

FISH CAN HAVE PCB CONCENTRATION 3,000--274,000 TIMES GREATER THAN THE CONTAMINATION OF THE STREAM BED. A FISH HATCHERY DOESN'T SEEM LIKE A VERY GOOD IDEA.

I REALLY DON'T EXPECT NEW BUSINESS TO COME INTO AN AREA THAT IS PCB CONTAMINATED EVEN AT LOW DOSES. THIS WILL NOT BE A BOON TO THE COMMUNITY. THE WHOLE COUNTRY WILL STAND BACK AND WATCH IF THIS GOES THROUGH, TO SEE WHAT DISASTERS WILL BEFALL US. WILL WE SUBSIDE OR WILL WE POLUTE OURSELVES OUT OF BUSINESS.

WHO WILL COMPENSATE YOU FOR YOUR LOSS OF BUSINESS OR HOMES THAT BECOME WORTHLESS. NO ONE ACCEPTS LIABILITY. WHY!! BECAUSE THE POTENTIAL FOR DISASTER IS SO GREAT THAT EVEN THE FEDERAL GOVERNMENT COULDN'T CARRY IT. HAVE YOU READ ON HOW THE EPA IS DOING CLEANING UP TOXIC WASTE? 2 OR 3 SITES WITH A MULTI-BILLION DOLLAR BUDGET. PEOPLE STILL OWN HOMES THEY CAN'T SELL OR LIVE IN.

I KNOW THAT PUMPING THOSE VOLUMES OF WATER WILL HAVE A DISASTEROUS EFFECT ON THE SURROUNDING WATER TABLES, BUT 20 FEET TEST WELLS IN THE RIVER BED WON'T SHOW THIS. 5 GALLON BUCKET MEASURING DEVICES WON'T SHOW THIS. THE 5 GALLON BUCKET TEST ONLY SHOWED THAT THE PERSONS PRESSURE TANK WAS FUNCTIONAL. YOU MAY AS

Ex 5

3-10-89

WELL PUT 5 GALLON BUCKETS IN THE FIELDS AND SEE IF PUMPING FROM THE MINES AFFECTS THEM.

I HEAR THAT QUALITY ISN'T BEING TESTED, BUT I KNOW THE AREA RESIDENTS ARE HAVING SAMPLES CHECKED NOW, AND WILL DO SO WHEN THE PUMPING STARTS BECAUSE THE PEOPLE WHO WANT THIS BOON-DOGGLE WON'T.

THE BURDEN OF PROOF HAS BEEN PLACED UPON THOSE WHO WILL SUFFER, TO STOP AN IRREPARABLE CATASTROPHY FROM HAPPENING.

Robert Lee

PROTECTIVE ORGANIZATION for WATER & ENVIRONMENTAL RESOURCES

Petition Opposing Pumping and Appropriation of
Abandoned Mine Waters for Irrigation Purposes

EXHIBIT 6

DATE 3-10-89
HB SB 390

pg 1 of 23

We, the undersigned residents of Musselshell County, by this petition, hereby stress our steadfast opposition to any proposal *for extraction of natural ground waters of Musselshell County from abandoned mines in the Roundup area to be tested and eventually claimed for irrigation purposes contrary to the established rights and needs of existing domestic, residential and ranch water users.

The present natural ground water supply is already a critically precious limited resource upon which residents and ranchers must totally rely for domestic, livestock and wildlife purposes. Removal of deep ground water reserves will inevitably result in lowered upper water tables, depleted springs and wells and diminished water sources, adversely and severely affecting established home, ranch and wildlife needs.

It is our opinion that the proposed pumping of natural ground waters from abandoned mines is an illogical, unnecessary and wasteful project which would establish an improper and dangerous diversion of our vital resources for irrigation purposes and that the projected expenditure of \$343,280 in public funds should be eliminated or put to an appropriate use for the benefit of the general public.

*Domestic use pumping at the rate of 5,300 acre feet/90 days, requested water right appropriation of 13,000 acre feet annually.

<u>DATE</u>	<u>PRINTED NAME</u>	<u>RESIDENCE</u>	<u>SIGNATURE</u>
4-10-87	Virginia Merfeld	Horsethief Rd.	Virginia Merfeld
4-10-87	Karen Merfeld	Horsethief RD.	Karen O. Merfeld
4-10-87	George P. Rothe	Horsethief RD	George P. Rothe
4-10-87	CHARLES D. MOORE	Roundup RD	Charles D. Moore
4-11-87	CLIFFORD W. HAGSTROM	Roundup Mont.	Clifford W. Hagstrom
4-17-87	Judith A. Stephenson	Dean Creek	Judith A. Stephenson
4-17-87	M. S. Stephenson	DEAN CREEK	M. S. Stephenson
4-17-87	Catherine M. Stephenson	DEAN CREEK	Catherine M. Stephenson
4/19/87	Linda Graham	Dillman Road (east)	Linda Graham
4/19/87	Michael J. Graham	Dillman Road (east)	Michael J. Graham
5/4/87	Lytle O. Odgers	347 Wicks, Billings	Lytle O. Odgers
5/4/87	Chas L. Lysum	Klein (Roundup, MT)	
5/4/87	Lucas H. Lysum	Klein (Roundup)	
5/4/87	James Dadds	Roundup	
5/4/87	Lucas H. Lysum	Roundup 833	
5-4-87	WILLIAM F. HARRIS	Roundup MT.	William Harris
5-4-87	LOYD COLE	Roundup MT	Lloyd Cole
5-4-87	Robert M. Toom	Dean Creek	Robert M. Toom
5-4-87	Peter F. Gray	Dean Creek	Peter F. Gray
5-4-87	Shirley Dale EVANS	4231 Hwy 87 S.	Shirley Dale Evans
5-4-87	Nesley Adolph	Roundup, MT.	Nesley Adolph
9-1-88	Jo Ann Hust	#5 Pinetop Rd. Roundup, MT.	Jo Ann Hust

WITNESS STATEMENT

NAME Lona Adams BUDGET SB# 390
ADDRESS 16 Aspen Rd Roundup Mt
WHOM DO YOU REPRESENT? P.O.W.E.R.
SUPPORT _____ OPPOSE X AMEND _____

COMMENTS: Already the folks in
the Bull Mountain area are
suffering from diminished
water - caused by the years
of drought. This mine pumping
project can only add to the
problem we already have (dimin-
ished property value - possible
Xtra cost of hauling water on Eads
from the Area. It does not seem
to me to be worth it -
considering the fact that we
56 families to water crops -
that a well soon drilled as - it -
Butter Management with
existing Basin water would
solve irrigation problems -
and let us go enjoy the
beauty of our Lake in
Years!

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

EXHIBIT. 8

DATE 3-10-89

HB SB390

March 1, 1989

Natural Resource Committee
Helena, Montana

Attention: *Mr. Bob Penney*

Gentlemen:

I protest the issuance of a permit to pump ground water out of the mines near Roundup, Montana from Bill SB390 because of the following reasons:

1. Existing recorded water rights should be honored above all
2. Legislative action should not attempt to shield the Deadman's Basin water users and their members from financial responsibility for damages should any occur due to loss of water in our wells when ground water is pumped for irrigation purposes.
3. Montana reservoirs are presently dry or nearly dry proving that Montana's semi-arid climate does not provide enough snow and rainfall to adequately recharge reservoirs or replenish ground water.
4. The water level in my own well is already down due to insufficient recharge because of the drought.
5. It is unfair when the taxpayers that may suffer damages due to the action taken, have to pay for this action which will benefit so few and could harm so many.
6. Unproven data presented does not agree with conditions as stated by old-timers, local people, which is based on many years of observation and experience versus assumptions and theory.
7. The state legislature is showing preferential treatment to a small interest group over the larger number of taxpayers by superceding their recorded vital water rights to ground water for domestic and livestock use only.

As a land owner and resident of the state of Montana, I am greatly concerned and strongly object to the passage of this bill. Please take this into consideration as you consider your vote.

Sincerely,

Robert & Gloria Toombs 575-4445

P.S. - We are very much concerned about the way in which this whole project has been handled. This interim water right of 3000 acrefoot could have a drastic impact on the value of land & improvements my wife & I have made to our property. How can a

Ex. #9

Mines were being pumped from 1888 on but each summer the river went dry, until, in the late thirties the Dead Man's Basin was finished and began functioning. I married and moved to Klein in the Bull Mountains in 1936. The entire area was becoming desert. Ranchers were selling and leaving because their springs and wells were going dry. Not until after the last mine stopped pumping in 1956 did the springs and streams begin to recover. The last drought years have affected them but still not to the extent of the thirties, forties and fifties. My husband and I watched the first water from Half-breed Creek start dripping into the Musselshell River in 1968 and went for a steak dinner to celebrate. We bought a retirement place in the Bull Mountains because of the return of the water. Please don't let anything wreck it.

Gilla Dale Evans,

Gilla Dale Evans

Roundup, Wyo. 80722

EXHIBIT

9

DATE 3-10-89

HB SB 390

WITNESS STATEMENT

NAME Willie Dale Evans BUDGET \$13,300

ADDRESS 4221 Hwy 87 S.

WHOM DO YOU REPRESENT? POWER.

SUPPORT _____ OPPOSE X AMEND _____

COMMENTS: Mines were being pumped from 1922 on
but each summer the river ran dry, until, in the late thirties
the Dead Man's Basin was finished
See Exhibit 9

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

10

DATE 3-10-89
HB SB 390

WITNESS STATEMENT

NAME DAWN COLE BILL NO. SB 390

ADDRESS 140 COLE RD

WHOM DO YOU REPRESENT? My family & myself & POWER

SUPPORT _____ OPPOSE ✓ _____ AMEND _____

COMMENTS: My family relies on ground water for our well, if this mine pumping goes through the ground water level will drop drastically imposing a hardship on us as we cannot afford to drill a 500' to 1000' for water.

There are many other families in this same situation.

You are here to serve the needs of the many NOT of the few. And this bill clearly serves only the needs of a few!

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

EXHIBIT 11
DATE 3-10-89
HB SB 390

WITNESS STATEMENT

NAME Arline Stephenson BUDGET S.B. 390
ADDRESS Roundup, Mont
WHOM DO YOU REPRESENT? P.O.W.E.R. & myself
SUPPORT OPPOSE AMEND

COMMENTS:

Highly oppose pumping mines.
These bureau's have not contacted
any of our experienced mine people.
We have the only man with full
maps of area - elevation - distances etc.
a past State Mine inspector and
a pre-shift mine examiner, who
went into mine before every working
shift.

We've tried for 2 years to
get these people to meet with us.
We're still waiting

No extension of time - Kill the bill

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

WITNESS STATEMENT

NAME Nola KORENKO Bill No. S.B. 390
ADDRESS 49 Cole Rd Roundup MT.
WHOM DO YOU REPRESENT? POWER AND MySelf
SUPPORT OPPOSE ☒ AMEND

COMMENTS: we do NOT want to jeopardize
~~our~~ our water to passafiy a
few greedy, wastful, Ranchers
Down River. And the Possability
of P.C.B.s in the Mine shafts.
from Transformers and
Electrical AND ~~mechanical~~
machanical Equipment. Left
when abandoned. will ~~pollute~~
~~the~~ ~~the~~ Pollute the river when
the water is Disturbed.

If the mines are Pumped +
we lose our Ground water.
we will have to move. the impact
would make Roundup a ~~ghost~~
ghost town.

A OUNCE OF Prevention —
is worth a 1000 lb. of CURE
no extension of time
Kill the Bill SB. 390

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

EXHIBIT 13
DATE 3-10-89
HB SB 390

WITNESS STATEMENT

NAME Jo Ann HUST ~~BUDGET~~ BUDGET SB 390

ADDRESS 5 Pinetop Rd

WHOM DO YOU REPRESENT? P.O.W.E.R.

SUPPORT OPPOSE X AMEND

COMMENTS: this Bill will work a hardship on
Hundreds of landowners, when the pumping
of the mines lower the water tables! my
well is already 590 feet deep & if I have
to drill deeper I will have to move from
my land as I can not afford to go any
deeper.

You are here to serve the TITANY not
the FEW & this bill will clearly serve
only the FEW!

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

WITNESS STATEMENT

NAME Dale Galt BUDGET SB #390
ADDRESS 791 Goulding Cr Rd
WHOM DO YOU REPRESENT? P.O.W.E.R
SUPPORT _____ OPPOSE ✓ AMEND _____

COMMENTS: I know a paper written by Dr. Groves
W. Bauder, Extension specialists. It depends on
the rock formations where you live how fast
groundwater will travel. It may take more
than 3 or 3 years before I ^{personally} feel the result of
the pumping of the mines. The more contamination
has started it is to late. I was raised in
the Roundup area and at that time there
was no water in Half Breed Creek & Goulding
Creek. Since they quit pumping the mines the
water has very slowly come back. It
takes about 30 inches of moisture to put
1 inch of water back in the groundwater table.
Our annual rainfall is less than 30 inches a
year. At present what water is in the
mines is holding the pollution at it's
present location. Once they start pumping
they will let the pollution start moving also.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

WITNESS STATEMENT

NAME Elizabeth Kothken BILL NO. SB 390
ADDRESS 1281 Gauley Creek Rd. Lonsdale, Mt. 59072
WHOM DO YOU REPRESENT? P.O. W.C.R. & Self
SUPPORT OPPOSE SB 390 AMEND

COMMENTS:

If this bill, SB 390 is passed,
I stand to lose my water to
my ranch and home thereby,
my property would be of no
value to self or anyone.
I am not here to represent just
myself but the majority of
my neighbors who fear they
too may lose everything they
have worked a life time for if
this bill is passed.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

WITNESS STATEMENT

NAME Joyce M. Egeher BUDGET _____

ADDRESS 32810 Hwy. 87 S., Roundup

WHOM DO YOU REPRESENT? my family & P.O.W.E.R.

SUPPORT _____ OPPOSE ✓ AMEND _____

COMMENTS: We object to test pumping of the mines
because, knowing our water table is fragile, the
impact of pumping would cause adverse effects
for several hundred families depending on ground
water. There are more, and better means of providing
irrigating water which can and should be employed.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

HIBIT 17
DATE 3-10-89
HB SB 390
3/10/89

WITNESS STATEMENT

NAME Sylvia Corey BUDGET Bill # SB.390
ADDRESS 290 Horegethiet Rd. Roundup MT, 59072
WHOM DO YOU REPRESENT? POWER
SUPPORT OPPOSE AMEND

COMMENTS: Potential damage to our future
water supply. Am not interested in any
type of amendments or compromises. We
have to rely 100% on existing ground
water. In the event that we should lose
it, our real estate would be of no value

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

WITNESS STATEMENT

HIBIT 18
DATE 3-10-89
HB SB 390

NAME Donald C. Corey BILL NO. SB 390
ADDRESS 290 Horse Thief Rd, Roundup, MT DATE 3/10/89
WHOM DO YOU REPRESENT? POWER
SUPPORT OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Potential damage to our future water supply. I am not interested in any type of amendment or compromise. We have to rely 100% on our existing ground water. In the event that we should lose our water, our real estate would be of no value.

March 1, 1989

Natural Resource Committee
Helena, Montana

Attention:

Gentlemen:

I protest the issuance of a permit to pump ground water out of the mines near Roundup, Montana from Bill SB390 because of the following reasons:

1. Existing recorded water rights should be honored above all
2. Legislative action should not attempt to shield the Deadman's Basin water users and their members from financial responsibility for damages should any occur due to loss of water in our wells when ground water is pumped for irrigation purposes.
3. Montana reservoirs are presently dry or nearly dry proving that Montana's semi-arid climate does not provide enough snow and rainfall to adequately recharge reservoirs or replenish ground water.
4. The water level in my own well is already down due to insufficient recharge because of the drought.
5. It is unfair when the taxpayers that may suffer damages due to the action taken, have to pay for this action which will benefit so few and could harm so many.
6. Unproven data presented does not agree with conditions as stated by old-timers, local people, which is based on many years of observation and experience versus assumptions and theory.
7. The state legislature is showing preferential treatment to a small interest group over the larger number of taxpayers by superceding their recorded vital water rights to ground water for domestic and livestock use only.

As a land owner and resident of the state of Montana, I am greatly concerned and strongly object to the passage of this bill. Please take this into consideration as you consider your vote.

Sincerely,

Willie U. Powell

EXHIBIT 20
DATE 3-10-89
HB SB 390

WITNESS STATEMENT

NAME Willie Pavaola BILL NO. SB 390

ADDRESS Bandy RT Box 41, Luvina NT

WHOM DO YOU REPRESENT? Powers

SUPPORT _____ OPPOSE X AMEND _____

COMMENTS: I feel that pumping of the mins
may lower the water table to the point
that water wells may go dry. If this
is approved it would benefit only a few
farmers with the possibility of burning range.
This area is semi arid and should
be farmed with that in mind. Also
I don't believe the soil here is fertile
enough to support crops, that require
an abundance of water

Willie Pavaola

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

21
DATE 3-10-89
HB 58390

WITNESS STATEMENT

NAME William Finch BILL NO. 58390
ADDRESS 535 Horseshoe Roundup St
WHOM DO YOU REPRESENT? Power & myself
SUPPORT _____ OPPOSE X AMEND No

COMMENTS: I am apprehensive as to the
future of my water well - which cannot
be restored after it goes dry and it could
be impossible lay liability to where the
water has gone.

I also feel that more
proper use of the present water ~~to~~ could
be evaluated and the waste be
eliminated and the abusers be identified
and such action taken to end that
abuse.

~~William Finch~~

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

WITNESS STATEMENT

NAME Llaria Stevens BILL NO. SB390
ADDRESS 5a Rte Box 20 Lavinia, Md. 29046
WHOM DO YOU REPRESENT? POWER - members
SUPPORT OPPOSE AMEND

COMMENTS:

Life is dependent on water - without it we die and so will our environment impact to the natural wildlife be death.
Mother nature ~~with~~ ^{with} the drought has hit impact. Something we could not control - then we can control - The lives of many are dependent on you and your water.
Please - do not drain the WATER - period - water tables will fall - maybe not immediately - but we can't afford any loss of water.

- Oppose bill SB390 -
Thank you

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Exhibit 22A

3-10-89

SB 390

March 1, 1989

Natural Resource Committee
Helena, Montana

Attention:

Gentlemen:

I protest the issuance of a permit to pump ground water out of the mines near Roundup, Montana from Bill SB390 because of the following reasons:

1. Existing recorded water rights should be honored above all
2. Legislative action should not attempt to shield the Deadman's Basin water users and their members from financial responsibility for damages should any occur due to loss of water in our wells when ground water is pumped for irrigation purposes.
3. Montana reservoirs are presently dry or nearly dry proving that Montana's semi-arid climate does not provide enough snow and rainfall to adequately recharge reservoirs or replenish ground water.
4. The water level in my own well is already down due to insufficient recharge because of the drought.
5. It is unfair when the taxpayers that may suffer damages due to the action taken, have to pay for this action which will benefit so few and could harm so many.
6. Unproven data presented does not agree with conditions as stated by old-timers, local people, which is based on many years of observation and experience versus assumptions and theory.
7. The state legislature is showing preferential treatment to a small interest group over the larger number of taxpayers by superceding their recorded vital water rights to ground water for domestic and livestock use only.

As a land owner and resident of the state of Montana, I am greatly concerned and strongly object to the passage of this bill. Please take this into consideration as you consider your vote.

Sincerely,



SB 390

3-10-85

4

WITNESS STATEMENT

NAME JOE MILLER BILL NO. SB 390

ADDRESS 237 HOMESTEAD Rd, ROUNDUP, MT

WHOM DO YOU REPRESENT? POWER

SUPPORT OPPOSE AMEND

COMMENTS: I oppose SB 390 because I
feel that pumping the old mines in
Roundup would deplete the groundwater
in the Bull mts. The fact that these
mines have not been pumped in the
last few decades and allowing Springs
and wells to recover to a normal
maximum level attests to the facts
that pumping of the mines are both
ludicrous and immoral. This ground
water is vital to the stability and
security of our future Montana.

Joe B Miller

See exhibit 22B

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

SB 390

3-10-89

Ex. 22B

March 1, 1989

Natural Resource Committee
Helena, Montana

Attention:

Gentlemen:

I protest the issuance of a permit to pump ground water out of the mines near Roundup, Montana from Bill SB390 because of the following reasons:

1. Existing recorded water rights should be honored above all
2. Legislative action should not attempt to shield the Deadman's Basin water users and their members from financial responsibility for damages should any occur due to loss of water in our wells when ground water is pumped for irrigation purposes.
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7. The state legislature is showing preferential treatment to a small interest group over the larger number of taxpayers by superceding their recorded vital water rights to ground water for domestic and livestock use only.

As a land owner and resident of the state of Montana, I am greatly concerned and strongly object to the passage of this bill. Please take this into consideration as you consider your vote.

Sincerely,



Ex. # 22C

3-10-89

SB 390

March 1, 1989

Natural Resource Committee
Helena, Montana

Attention: *Bob Roney*

Gentlemen:

I protest the issuance of a permit to pump ground water out of the mines near Roundup, Montana from Bill SB390 because of the following reasons:

1. Existing recorded water rights should be honored above all
2. Legislative action should not attempt to shield the Deadman's Basin water users and their members from financial responsibility for damages should any occur due to loss of water in our wells when ground water is pumped for irrigation purposes.
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4. The water level in my own well is already down due to insufficient recharge because of the drought.
5. It is unfair when the taxpayers that may suffer damages due to the action taken, have to pay for this action which will benefit so few and could harm so many.
6. Unproven data presented does not agree with conditions as stated by old-timers, local people, which is based on many years of observation and experience versus assumptions and theory.
7. The state legislature is showing preferential treatment to a small interest group over the larger number of taxpayers by superceding their recorded vital water rights to ground water for domestic and livestock use only.

As a land owner and resident of the state of Montana, I am greatly concerned and strongly object to the passage of this bill. Please take this into consideration as you consider your vote.

Sincerely,

Nancy Paysinger
John Paysinger

Exhibit #22D

3-10-87
SB 390

WITNESS STATEMENT

NAME Mrs Emma A. Huber BILL NO. SB 390
ADDRESS Lo Rt Box 5 - Laveen HT 59046
WHOM DO YOU REPRESENT? POWER
SUPPORT _____ OPPOSE X AMEND _____

COMMENTS:

I oppose this Bill SB 390
because it can not be proven
that by pumping water from the
Rounded mines even in small
testing amount will not run my
well dry. In this case I could
not even sell my land or home, and
consequently land, homes and business
would suffer economically.

God gave you the opportunity
to represent we the people and we
wish you will understand our
position and agree with us.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

SB 390

collected by the Montana Bureau of Mines and Geology in the SB 390 summer of 1987 are listed in Appendix C. Locations of all wells and springs that have been inventoried by site visitation are shown on Plate 2.

Ground-Water Flow

A generalized potentiometric map for the Fort Union Formation (Slagle and others, 1986) indicates that ground water on the north side of the Bull Mountains flows northward toward the Musselshell River. Although not well defined, ground-water discharge from Fort Union aquifers into the river and its alluvium is indicated.

In 1982, a discussion of ground-water flow in the Bull Mountains was presented by Thompson (p. 23-26), characterizing the hydrogeologic roles of precipitation, topography, and aquifers. His discussion related to the Mammoth coal bed, lying several-hundred feet above the Roundup coal, but applies as well to the Roundup bed. Thompson wrote:

"The flow of ground water in the Bull Mountains is dependent on temporal variations in precipitation, on the area's topography and complex stratigraphy, and on joint and fracture systems in the sandstone and coal aquifers.

Seasonal variations in precipitation cause increases or reductions in the amount of recharge to the ground-water system, which show up most prominently in the seasonality of many springs. Records of observation-well water levels showed no evidence of a recharge event in the spring of 1982. The shortness of the record and its early termination might have caused the exclusion of a recharge event with a time lag behind the period of maximum precipitation.

During drilling of observation wells, many thin, interbedded sandstone and shale strata were encountered. Several thin saturated zones of sandstone were found above dry shale or dense siltstone, and often strata below the shales or siltstones were also dry. Drill-hole cores contained open fractures or joints in sandstone and coal, and similar features were observed in outcrops. Except in a few coarser-grained, less clayey sandstones in the area, these joints and fractures are probably the most important passageways for ground water. They are the only permeable features in the coal seams. The more permeable and more densely-jointed strata are preferentially used as conduits [conduits] for ground-water flow. Less-permeable beds act as aquitards and perching beds; little ground water flows through them.

Figure 6 [3] schematically illustrates ground-water flow in the Bull Mountains. Precipitation readily infiltrates into the butte-capping, highly permeable clinker which, because of its large porosity, acts as a reservoir for temporary storage of recharge. Downward movement of recharge water is slowed by the underlying less permeable stratum so that a lens of perched water is formed within the clinker. The spring at A in Figure 6 [3] is supplied by this perched water, and discharges at the contact of the clinker and the underlying less permeable rocks. Because the rocks beneath the clinker are not completely impermeable, some downward movement of ground water does occur. As this water moves through the rocks, contrasts in permeability between various lithologic units complicate the general downward movement. Other lower perched lenses of water accumulate above low-permeability layers. This lower perched water can either spill over the edges of the perching bed (B on Figure 6 [3]) and resume its downward movement, or if the perched aquifer crops out, the water can exit as a spring from a topographically low point on the outcrop (C on Figure 6 [3]). Springs of this type generally discharge from well-developed joints in thick sandstones. Strata having a moderately low permeability, or those with a small areal extent sometimes give rise to seeps at their outcrops (D on Figure 6 [3]). They neither receive nor transmit large amounts of ground water. The general downward movement of water continues, interrupted in places, until the water table is reached. Flows from aquifers that subcrop along the valley fill (E on Figure 6 [3]) recharge the alluvial aquifers. Flow in the

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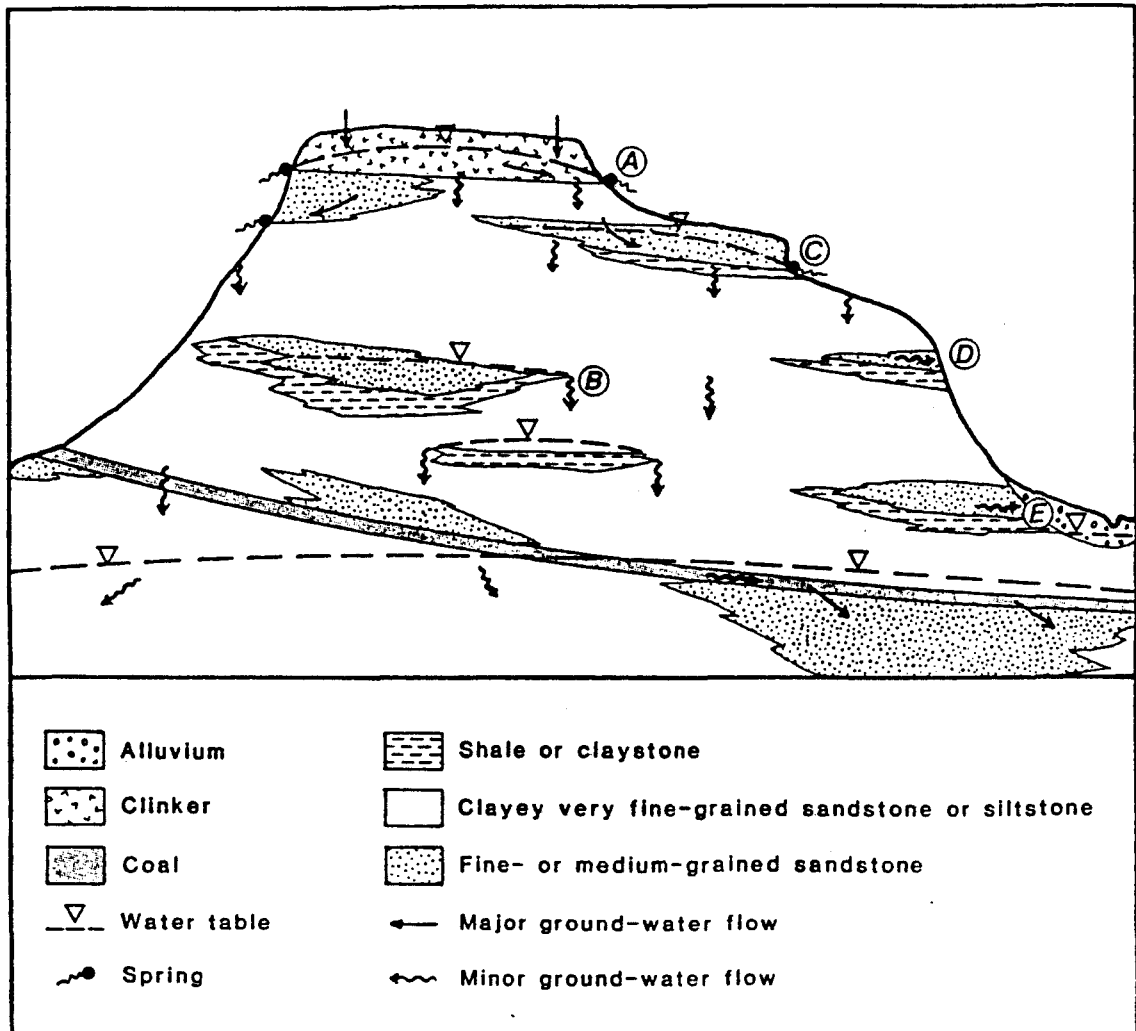


Figure 3. Idealized cross-section of the Bull Mountain area, characterizing ground-water flow (from Thompson, 1982).

alluvial aquifers is generally down-valley; depending on the type of bedrock beneath the alluvium and the bedrock's water table elevation, the ground water in the alluvium may leak downward into the bedrock.

The coal bed shown on Figure 6 [3] typifies conditions in the Mammoth coal. Generally near its outcrop in updip areas the coal is dry, downdip it is partly saturated, and still farther downdip it is fully saturated and may contain water under confined conditions."

Water-Level Monitoring

Included in Appendix C and on Plate 2 are 16 observation wells installed in alluvium along Halfbreed Creek and the Musselshell River. These wells were installed with the objective of monitoring long-term water-table reactions to precipitation and streamflow. Also, should development of mine-workings water occur, these wells will provide invaluable base-line data. Completion forms for these wells are presented in Appendix D. Monitoring at these wells began in December, 1987 (Figures 4, 5, and 6). The data show seasonal fluctuations from December 1987 to the present, caused by irrigation, evapotranspiration, and/or recharge from precipitation. To date, too short a record has been collected to define the nature and timing of seasonal events. All of the wells appear to be hydraulically connected to the adjacent watercourses through the alluvium, so the water levels should reflect conditions of low flow in Halfbreed Creek and the Musselshell River.

Figure 4 illustrates water level fluctuations in Halfbreed Creek alluvium. Water levels in RU-02 and RU-06 show very little change from the initial reading to the present. The water levels in RU-01 and RU-07 rose during the winter and have since

hydraulic connection between monitoring points within the SB 390 Jeffries Mine, but a poor connection between the Jeffries and the Republic No. 1 Mines. Slow recovery trends indicate a low recharge rate to the Jeffries Mine. To address potential production and impacts of production, tests that further stress the ground-water system must be conducted.

DISCUSSION

This report has presented an overview of hydrogeology of the Bull Mountain area and the underground mine workings near Roundup. Hydrogeologic conclusions from available data are: (1) about 17,000 acre-feet of ground-water are probably stored in the mines; (2) most of the workings lie more than 400 feet below land surface; (3) quality of water in the workings appears satisfactory for irrigation; (4) positive-submergence pumps in locales with the greatest hydraulic heads would be needed to provide the greatest continuous discharge; and (5) numerous stock and domestic wells rely upon Fort Union Formation aquifers (primarily sandstone) for water supply.

There are numerous questions that this reconnaissance-level study cannot answer. These questions can be addressed through a logical progression of future steps. The critical first element to be assessed is a determination of the degree of hydraulic interconnection of the mine workings. The other questions that must ultimately be addressed are the effects on wells and surface

water in the area, potential subsidence, natural recharge and SB390 economic feasibility. At each step, potential problems must be evaluated to determine if a solution is available either through an engineering approach or through mitigation. Serious problems at any of these steps would likely cause the project to be terminated. Even so, some limited use of the resource would be possible.

At the present time, the next logical step in this appraisal would be careful, low-volume pumping of the mine workings under prudent monitoring of observation wells and water wells completed in and near the various mines. With this minor stress of the system, interconnection could be evaluated while insuring protection to existing water supplies. If, through additional studies this question and the others can be favorably addressed, then a longer term demonstration of the resource potential could be undertaken.

Senate bill-201 is now more important to the future of Montana, than ever, as we have four new Oil & gas Board members, which I feel will be very fine members, but know practically nothing at all about the programmatic studies that have been prepared over the last year and a half.

I have been involved with this study since it was created and helped creat it. I see the need for the study as it has been the trend to regulate the Oil and Gas industry out of any possibility of doing things as they have been for the last 50 plus years. And in some ways I have to agree with specific changes; but the final chapter in this study has many points that have to be ironed out or the ability to explore for minerals on State and Private lands will be nearly impossible, both environmentally and monetarily.

Mineral industries, Oil and Gas especially, have been Montanas mainstay financially, and in the last few years it has shrunk to about half of what it was. Price of crude has made a difference, but not as much as tax issues have. Even the established companies have moved to better tax situations in other states rather than pay our tax fees and also having to fight our changing requirements to get a permit to drill.

I have been working for Oil companies for 18 years now and it was great till 1985 for me. Since then it has been a steady slide into a almost no work situation. That is why I got involved in Lobbying, to try to help keep not only my business alive, but the industry as well.

I have caught all kinds of flak over starting this study but I have been involved in the mountain front, the Kevin rim, Sweetgrass hills, Cow Creek, and the Montana Trail bike issues for years now and I feel this study was a must.

The committee that worked on this have done a super job in the first four chapters. If any of you want a reference book on the Oil and Gas industry, this is it. But the fifth chapter has to be changed, or the restrictions will be the last straw to the small stripper producers. When they are so close to break even and have to try to comply to the suggestions in this chapter, they won't be able to do it and they will stop any new developement if not total operations.

After so much time and effort, which has proven that the data and regulations are already in place, as all this study was done in house with data on record in the state departments, it would be a shame to force adoption of this study without the new board being able to study the results gathered from the three meetings just finished Wednesday night in Great Falls. And as four of the members are new it should be extended time wise so they can get their information studied and ^{new}rewrite the needed changes, allow them to be reviewed, and then the document should be studied and what could be of a benefit be adopted, and what is not could be used for information only.

Senate bill 201 has asked for this time and I concure with this and ask you to allow this study to fulfill its purpose, which is to help

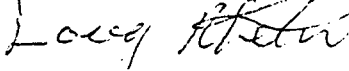
2nd page

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iron out the needs both environmentally and regulatively to allow us to comply with and benefit from the data compiled in this document.

Please don't let "Fugitive Dust," referred to in this study become an expression referring to the Oil and Gas industry in this state. The Oil and Gas board are Montana people trying to help Montana people, and they should be allowed to do so to the best of their ability. So please give them that time.

Doug Abelin



Montana Oil and Gas Association.

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Bridger Watch

P.O. Box 4407, Bozeman, Mt. 59715

March 10, 1989

Dear Mr. Chairman and Members of the Committee,

Thank you for this opportunity to express our concerns. I represent Bridger Watch, a citizens group that has been concerned about oil and gas policies in Montana since 1984. As exploration for the oil and gas that we all use extends into overthrust-type structures, we will see wells that are much deeper (the Sohio Moats 1-3 well in Bridger Canyon near Bozeman was 15,000 ft. deep) and therefore may experience great pressure, may involve higher concentrations of "sour gas" (gas containing high quantities of H_2S) and will be closer to residential and / or traditional recreation areas. Compliance with MEPA is not unjust delay but assures proper and correct procedure in order to represent and protect the rights of all the people and environment of an area. Few wells will require a full EIS, but when such action is required, it is to the benefit of all to have factual data compiled in an impartial and comprehensive manner. Bridger Watch is well aware that the function of an EIS is not to stop a well, but rather to review all conditions specific to a well and the workable options for procedure.

I want to tell you now why we are so concerned with the possible impacts of oil and gas drilling. In Alberta, Canada, the infamous Lodgepole 13-12 well made us realize that a serious accident could pose a great danger to our families and property. The Lodgepole 13-12 well raised the issue of deadly H_2S gas and its effects on humans and livestock. This was a well drilled by a reputable company, with a good safety record, in a known field. None the less that well blew out of control for 67 days. The H_2S plume did not follow the "graph predictions" and was smelled 800 miles away in Winnipeg, Manitoba. The following slides will show you what happened.

Oil and gas drilling and production raises concerns regarding: protection of ground and surface water, air quality control, fire protection, noise levels, traffic and road conditions, weed control, soil protection, livestock and wildlife protection and aesthetic values, in addition to the health and safety plans and evacuation plans for nearby residents. The total weight of all possible impacts from drilling of only one well must be taken seriously. Please retain the protection of MEPA for all of Montana and its people. Thank you.

Sincerely,

Mary Ann Kelly

ACTIONS

GENERAL

The Panel has submitted 39 recommendations that involve industry, the ERCB, government departments and, to a lesser degree, the public. They are wide-ranging in their scope. The Panel invites readers to obtain a copy of the Summary Report and review them. Two of the more important areas are commented on below.

REDUCE BLOWOUTS

While blowouts can't be totally eliminated, they can be significantly reduced. The Panel has recommended that

- new strict rules apply to drilling critical sour wells, to ensure careful planning, superior equipment and well trained crews
- the design, capacity and operating problems of key components of drilling rigs be carefully examined to determine whether changes are necessary
- drilling operations in the critical zone be conducted in a cautious manner
- ERCB increase both the number and completeness of its inspections of drilling operations
- the training of drilling personnel be improved

Each of these recommendations has been implemented or is under active consideration.

REDUCE EFFECTS OF A BLOWOUT

If a blowout were to occur the Panel believes that its effect can be reduced by

- requiring a site-specific emergency response plan for critical sour wells
- ensuring effective coordination of government response to the blowout
- ensuring effective communication with the public and particularly with the people residing in the immediate area
- ensuring that H₂S exposure limits are appropriate - especially for sensitive people
- ensuring that H₂S concentrations are carefully monitored and the information made available to the public

Most of these recommendations have been at least partially implemented.

WANT MORE INFORMATION?

If you are interested in learning more about the Lodgepole Blowout, the ERCB has three documents available:

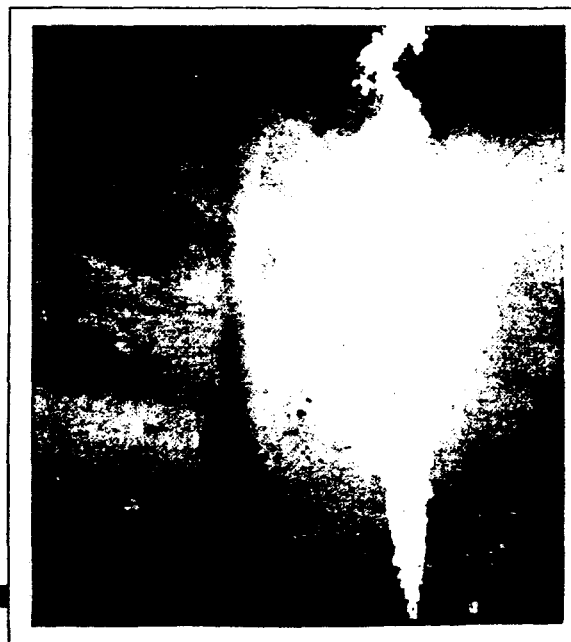
- 1 Summary of Recommendations
- 2 Phase 1 report (a detailed analysis of the event and its effects, which includes the Phase 2 report)
- 3 Addendum to Phase 1 report, which deals with the updated estimates of emissions from the 13-12 well

WORTH READING!

Write, or drop by, any of the ERCB offices listed below:

Energy Resources
Conservation Board
Maps and Publications Desk
640 Fifth Avenue S.W.
Calgary, Alberta
T2P 3G4
Phone: 297-8328

or
Energy Resources
Conservation Board
Postal Station "D"
12204 - 145 Street
Edmonton, Alberta
T5L 4J6
Phone: 427-0200



A once-in-a-lifetime photo of a small tornado caused by the vacuum developed from the fire and tremendous pressure tearing from the Lodgepole well.

EXHIBIT 26
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ERCB

LODGEPOLE Blowout Report

CAUSES,
EFFECTS,
ACTIONS.

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Ex #26
3-10-89

CAUSES

WHAT HAPPENED?

Amoco spudded its 13-12 well on 10 August 1982. By 15 October, coring operations were proceeding at the 3000-metre level. Two cores were recovered that day without incident. Then, while cutting the third core on 16 October, formation gas unexpectedly began entering the wellbore and a "kick" occurred! For the next 16 hours the crew fought to control it, but on 17 October the well blew totally out of control.

In spite of a great deal of expertise and money, the well was not brought under control for another 67 days. During that period the Lodgepole blowout entered oil patch history, with two wild-well fighters dead, the public very upset, and millions of dollars in equipment and hydrocarbons lost. When the well was finally brought under control, the major question remained, "what went wrong?"

WHAT WENT WRONG?

(a) The initial "kick" occurred primarily because

- drilling practices, while cutting cores 2 and 3, were deficient
- the density of the drilling mud was only marginally adequate

(b) The kick was not controlled because

- the drilling crew did not immediately recognize the problem and apply standard kick-control practices
- several pieces of vital equipment did not function properly
- supplies of mixed drilling mud were not adequate
- the gas-bearing formation was extremely prolific

WHY DID IT TAKE SO LONG TO REGAIN CONTROL?

Several factors made control operations particularly difficult

- not only was the flow rate very high, but it contained large volumes of condensate and a high percentage of hydrogen sulphide (H_2S)
- weather conditions were frequently unfavourable
- safety procedures and equipment, although meeting existing standards, proved to be inadequate

Initially, both Amoco and the ERCB considered only two well control options;

1) capping when *not* on fire, and 2) drilling a relief well. The dangerous alternative of capping the well *while it was on fire* - which ultimately proved successful - was only adopted after the more traditional options had failed.

EFFECTS

WHAT WERE THE EFFECTS OF THE BLOWOUT?

EMISSIONS

For 67 days, very large volumes of gas, condensate and sulphur were emitted to the atmosphere. For most of those 67 days, the well was on fire and the sulphur was emitted as sulphur dioxide (SO_2), but for 26 days (when the well was not on fire) the sulphur was emitted as hydrogen sulphide (H_2S) with its offensive "rotten-egg" odor. Daily sulphur emissions from the 13-12 well were greater than the total current emissions from the more than 130 sour gas plants, 5 coal-fired thermal power plants, and two oil sands plants, operating in Alberta.

EFFECTS ON PEOPLE

Local area residents, and a group of Edmonton respiratory patients, described how the blowout had affected their health. The effects included headache, eye irritation, sore throat, nose bleeds, some breathing problems, nausea and diarrhea. While scientific data was not available to link these health problems to the blowout, the Panel is satisfied that emissions from the 13-12 well did lead to short-term health effects for a substantial number of people. The evidence also suggests that some people are especially susceptible to H_2S emissions.



The Lodgepole blowout site, one of the 40 long-regulated oil streams.

Government departments reported on their efforts to ensure that people were not exposed to dangerous concentrations of either H_2S or SO_2 . Exposure limits were established and nine monitoring units were employed to identify any situation when the limit would be exceeded. That occurred only on a few occasions, at rural residences, and the occupants temporarily left the area.

Actual H_2S concentrations at residences were substantially below the H_2S exposure limit of 15 parts per million (ppm) except for the occasional episode. For example, at Cynthia and Lodgepole the recorded concentrations were less than 1 ppm for 95 and 87 per cent respectively of the total monitored hours. At Drayton Valley it was 96 per cent, and at Edmonton the concentrations were less than 0.1 ppm for 93 per cent of the monitored hours.

During the 41 days that the well was on fire, and the sulphur was being emitted as SO_2 , the concentrations were substantially less than the evacuation limit

EFFECTS ON THE ENVIRONMENT

Environmental impacts were relatively modest. The major effects occurred on the 300 hectares (741 acres) surrounding the well. When the well was not on fire, the condensate "rain" had an impact similar to an oil spill. Two fires occurred during the several attempts to cap the well and burned all vegetation and trees in the immediate area. These fires also consumed much of the condensate, which greatly reduced the possibility of longer-term soil pollution. However, the unburned condensate, which was deposited on the perimeter of the blowout site, will have some impact on trees, groundwater, and soils for a number of years.

Sulphur emitted from the well was deposited in low concentrations on the ground over an area of hundreds of thousands of square kilometres. No evidence exists that there will be long-term harmful effects on soils, vegetation or water bodies.



ERCB
LODGEPOLE
Blowout Report

EXHIBIT 27
DATE 3-10-89
HB 503 0261
J. H. Keating

Schedule for Programmatic EIS

- Draft EIS is currently circulating for comments
 - comment period ends March 31
- Current plan: a draft of the Final EIS would be ready for review by the Board of Oil and Gas by the end of April.
- Board of Oil and Gas would meet at the beginning of May to suggest any changes in the Final EIS.
- Final EIS is sent to printer by May 15. (printing takes 2 weeks)
- Final EIS is distributed to public on June 1.
- 15 day comment period on Final EIS goes from June 1 - June 15.
- Board is(tentatively?) scheduled to meet on June 29 to adopt the Final EIS.

What is required of the Board of Oil & Gas to comply with MEPA?

They must adopt a checklist in order to comply with MEPA. It would also be appropriate for the Board of Oil & Gas to adopt an application form for the drilling permits.

Amendments to SB 201

1. Page 1, line 8.
Strike: "June 30, 1991"
Insert: "August 31, 1989"
2. Page 1, line 12.
Strike: "June 30, 1991"
Insert: "August 31, 1989"
3. Page 4, lines 13 - 14.
Strike: "June 30, 1991"
Insert: "August 31, 1989"

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TABLE 43

EXAMPLES OF ENVIRONMENTAL REVIEW SCENARIOS

EXHIBIT 27
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Hypothetical Drilling Proposal ¹	Environmental Features/Constraints	Likely Level of Environmental Review	Likely Time Required
Wildcat Well to Known Producing Formation — Location is near a producing well — H ₂ S present — saltwater drilling — 1/2 mile new access trail—bladed — lined reserve pit	— rangeland, flat to gently rolling — 1/2 mile to nearest surface water — no sensitive features at or near the drill site	Level I	1 or 2 days ² 55-90% ³
Rank Wildcat Well — formation characteristics uncertain — saltwater drilling anticipated — H ₂ S may be present — 1/2 mile new access road—partly cut and fill construction — lined reserve pit	— irrigated cropland — riparian vegetation — 1/4 mile to river — shallow water table — no nearby residences — 1/2 mile to developed recreation sites (campground & fishing access)	Level II	1 or 2 days ^{2,3} 9-14% ³
Rank Wildcat Well — deep target formation, characteristics uncertain — 1/2 mile new access road—partly cut and fill construction — H ₂ S likely present — fresh water drilling — lined reserve pit — road use only by the operator and contractors — road reclamation planned if well is unsuccessful	— foothills — big game winter range — municipal watershed — 1/2 mile to public land and recreation area — rural residences down-drainage — porous soils — Class I stream less than 1/4 mile away	Level II or III ⁴	10 - 30 days ^{2,5}
Rank Wildcat Well — H ₂ S present — extensive new access roads — fresh water drilling	— mountainous terrain — Class I stream drainage — critical wildlife habitat — grizzly bear habitat — roadless area — adjacent primitive recreation area — visually sensitive — adjacent private recreation facilities or business — glacial till soils	Level III	6 months - 1 year ⁶ 17% ³

Footnotes

- ¹ "Wildcat" and "Rank Wildcat" wells may require formal definitions.
- ² Assumes (a) that the Board has developed rules/guidelines specifying minimum acceptable practices for drilling and production operations; (b) that the information described in Figure 48 is readily available; (c) that the Board has established consultative relationships with other agencies; and (d) that the Board has adequately trained staff and that the workload level allows staff to begin review the same day an application for a permit to drill is received; (e) that no exceptions to the statewide spacing rule are involved.
- ³ This example assumes only telephone contact for interagency consultation.
- ⁴ Level II review could be adequate for this example if sufficient data is readily available to assess impacts, if all involved agencies are essentially in agreement about any mitigating measures that would be applied, and if sufficient data and analysis has been done to allow Board to determine that concern over impacts raised by other agencies or the public have been adequately addressed.
- ⁵ This time estimate assumes interagency agreements can be readily reached. If documentation is required or if further effort to work out disagreements is necessary, additional time will be needed to complete the review process.
- ⁶ The assumptions included in Footnote 3 would also apply to Level III review except that the data necessary to conduct the environmental evaluation will likely require more extensive effort to compile than the other levels of review.

FIGURE 49

ENVIRONMENTAL CHECKLIST FOR OIL AND GAS WELLS

PART A

Development well/short step-out
(one mile or less from existing field:)

Is this well within one mile of an existing field or producing well?

Yes ☐ No ☐

Field Name _____
(if No use part B)

Is there any aspect of the proposed operation which differs significantly from the existing operations?

Yes ☐ No ☐

If Yes, what is
the difference?

Will this difference result in impacts (or levels of impact) that would not usually be associated with the type of wells commonly drilled in the field or producing area?

Yes ☐ - use part B

No ☐ - explain:

Will successful completion of this well result in expansion of the field into areas with substantially different resources or values, or result in substantially increased impacts or impacts not associated with the existing wells?

Yes ☐ - use part B

No ☐

Complete the Summary Evaluation of Impacts Section (Part C).

EXPLORATORY OR LONG STEP-OUT WELLS
(greater than one mile from existing production)

EXHIBIT

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When completing the following section consider potential impacts that could occur as a result of drilling and possible production from the individual well.

AIR QUALITY:

OVERALL RATING:

(POSSIBLE CONCERNS)

- Long drilling time
- Unusually deep drilling (high horsepower rig)
- Possible H₂S Gas production
- In/Near Class I air quality area
- Air quality permit for flaring/venting (if productive)

MAJOR	
MODERATE	
MINOR	
NONE	

MITIGATION:

- Air quality permit (AWB Review)
- Gas plants/pipelines available for sour gas
- Special equipment/procedures requirements
- Other: _____

WATER QUALITY:

OVERALL RATING:

(POSSIBLE CONCERNS)

- Salt/oil based mud
- High water table
- Surface drainage leads to live water
- Water wells nearby
- Porous/permeable soils
- Class I stream drainage

MAJOR	
MODERATE	
MINOR	
NONE	

MITIGATION:

- Lined reserve pit
- Adequate surface casing
- Berms/dykes, re-routed drainage
- Closed mud system
- Other: _____

SOILS/VEGETATION/LAND USE:

OVERALL RATING:

(POSSIBLE CONCERNS)

STREAM CROSSINGS

- High erosion potential
- Loss of soil productivity
- Unusually large wellsite
- Loss of native vegetation/timber/crops/special status plants
- Damage to improvements
- Conflict with existing land use/values

MAJOR	
MODERATE	
MINOR	
NONE	

MITIGATION:

- Avoid improvements (topographic tolerance)
- Exception location requested
- Stockpile topsoil
- Stream crossing permit (other agency review)
- Reclaim unused part of wellsite if productive
- Special construction methods to enhance reclamation
- Other: _____

HEALTH HAZARDS/NOISE:

OVERALL RATING:

(POSSIBLE CONCERNS)

Proximity to public facilities/residences
Possibility of H₂S
Size of rig/length of drilling time

MAJOR	
MODERATE	
MINOR	
NONE	

MITIGATION:

Proper BOP equipment
Topographic sound barriers
H₂S contingency and/or evacuation plan
Special equipment/procedure requirements
Other: _____

WILDLIFE/RECREATION:

OVERALL RATING:

(POSSIBLE CONCERNS)

Proximity to sensitive wildlife areas (FWP identified)
Proximity to recreation sites
Creation of new access to wildlife habitat
Conflict with game range/refuge management

MAJOR	
MODERATE	
MINOR	
NONE	

MITIGATION:

Avoidance (topographic tolerance/exception)
Other agency review (FWP, federal agencies, DSW)
Screening/fencing of pits, drillsite
Other: _____

HISTORICAL/CULTURAL/PALEONTOLOGICAL:

OVERALL RATING:

(POSSIBLE CONCERNS)

Proximity to known sites

MAJOR	
MODERATE	
MINOR	
NONE	

MITIGATION:

Avoidance (topographic tolerance, location exception)
Other agency review (SHPO, DSL, federal agencies)
Other: _____

SOCIAL/ECONOMIC:

OVERALL RATING:

(POSSIBLE CONCERNS)

Substantial effect on tax base
Create demand for new governmental services
Population increase or relocation

MAJOR	
MODERATE	
MINOR	
NONE	

EVALUATION OF CUMMULATIVE IMPACTS

If additional wells were drilled within 2 miles of the proposed well what would be the cummulative impacts on the following:

	MAJOR	MODERATE	MINOR	UNKNOWN
AIR QUALITY				
WATER QUALITY				
SOILS/VEGETATION/LAND USE				
HEALTH HAZARDS/NOISE				
WILDLIFE/RECREATION				
CULTURAL/PALEONTOLOGICAL				
SOCIAL/ECONOMIC				

SAMPLE

Complete Part C

PART C
SUMMARY EVALUATION OF IMPACTS

Does the proposed drilling project considered as a whole:

Have impacts that are individually limited, but cumulatively considerable? (A project may result in impacts on two or more separate resources which create a significant effect when considered together or in total.)

Contribute substantially to adverse effects on an environmental resource that are occurring or anticipated due to other development, including oil and gas drilling, in the same geographic area as the proposed drilling project?

Establish a precedent or likelihood that future actions with significant environmental impacts will occur?

OVERALL SUMMARY RATING OF IMPACTS:

MAJOR	MODERATE	MINOR	NONE

The proposed project will have:

- ☐ No significant impacts; no further evaluation necessary.
- ☐ Impacts are potentially significant. Additional environmental analysis, documentation or consultation needed, as follows: _____

Prepared by: _____ (Title) _____

Date: _____

TABLE 42

SENSITIVE ENVIRONMENTAL FEATURES AND CONSTRAINTS FOR OIL AND GAS WELLS*

27

DATE 3-10-89

HB SB 201

GEOLOGY/SOILS

Steep slopes (30% or greater)	Erodible soils
Unstable slopes	Porous soils
Produced waters—high TDS sodium chlorides	Floodplains

WATER QUALITY

Municipal watersheds	High water table
Portable surface and ground water	

AIR QUALITY

Hydrogen sulfide	Non-attainment areas
Sulfur dioxide	Narrow mountain valleys
Class I areas	

WILDLIFE/FISHERIES

Critical game habitat	Waterfowl Production areas
winter range	Riparian habitat
migration routes	Threatened/endangered species habitat
birthing grounds	Designated game refuges and ranges
breeding grounds	
Class I and II streams	

LAND USE

Residences	Irrigated cropland
Public roads	Designated natural areas
Public buildings	Roadless areas
Cities/towns	

RECREATION/AESTHETICS

Developed recreation sites	Wilderness/primitive areas
Dude ranches/resorts	Established trails
Parks/monuments	Scenic overlooks/roadways
Fishing access sites	
Wild/scenic rivers	

CULTURAL/HISTORIC

Native American religious sites
National register sites/landmarks
Paleontological sites
Historic sites

* Definition of sensitive environmental features and constraints may need to be developed. Use of sources from published information or available from other agencies may ease the task of determining presence or absence of these factors.



MONTANA CHAPTER SIERRA CLUB

EXHIBIT 28
DATE 3-10-89
THE SB 201
Sen Keating

415 NORTH 17TH AVENUE • BOZEMAN, MONTANA 59715 • (406) 587-9782

SIERRA CLUB TESTIMONY IN OPPOSITION TO SB 201 KIM WILSON, LOBBYIST

The Sierra Club opposes Senator Keating's Senate Bill 201 for two primary reasons.

First, the testimony at the hearing in the Senate indicated there was no need for a two year extension of time to allow the Board of Oil and Gas Conservation to adopt a programmatic Environmental Impact Statement (EIS). In 1987, the Legislature granted the Board until June 30, 1989 to complete this EIS. Until the Board did so, the issuance of a permit to drill a well for oil or gas was to be exempt from the Montana Environmental Policy Act (MEPA). The Board has nearly completed its work as scheduled. While it may be that the Board needs a short extension to complete its work, two years is an unreasonably long period of time. Since that two years is clearly unnecessary, and since there is a risk of damage from well drilling operations in the interim, it is not in the state's best interest to delay the matter.

Our second reason for opposing this measure is that we see it as simply one more example of attempts this session to nickel and dime away the foundations of environmental protection in Montana. Montana's environmental laws, especially MEPA, provide necessary protection to the environment. If anything, these laws should be improved. In the case of oil and gas operations, environmental degradation can and does occur. This bill, by extending the exemption, weakens MEPA. There is no need for this bill. Please vote against SB 201.

EXHIBIT 29
DATE 3-10-89
HB SB 201

Mr. Chairman, Members of the Committee,

My name is Connie Wilson. I am a landowner representative on the Oil and Gas Advisory Council from Bainville, and am here in opposition to SB 201.

Working with all branches of government concerned with oil and gas production, such as the Department of Natural Resources and Conservation and the Bureau of Land Management, and with industry representatives during the past year, I have come to understand the viewpoints. When I initially brought up the issue of Hydrogen Sulfide gas (H₂S) at Advisory Council meetings, it was casually dismissed as public hysteria - as a problem that rarely occurs. But, since that time the plight of a landowner couple from Culbertson, Mr. and Mrs. Baker Finnicum, has come to our attention.

The Finnicums registered many complaints of burning sinuses and chest pains with the Board of Oil and Gas, the Board's field inspector and the Air Quality Bureau. After a formal complaint was registered, a Gas/Oil Ratio Test was done on the Tiller Well near their home. However, this test was done without flaring the gas and without notifying the Finnicums, a direct violation of Oil and Gas Rule 36-22-1221.

Finally, the Finnicum's enlisted the help of then Senator Ed Smith, the Northeast Land and Mineral Owners Association (NLMOA), and myself after being subjected to the harmful effects of H₂S

since December of 1986. We traveled to Billings to meet with the Board in November of 1987. As a result of our meeting the Tiller Well was shut in.

However, it was turned on again in November of 1987, with serious malfunctions occurring since that time. At times the Finnicums have been made so ill by the H2S that it has been impossible for them to go outside to feed their cattle and they can no longer permit their young granddaughter and elderly parents to visit due to incidences of profuse vomiting they have suffered during visits. These people are going to be forced from their home and family farm of 45 years.

Unfortunately, this is not an isolated case. Last September, 20 families were evacuated from their homes near Fairview when a control valve on a well ruptured. For nearly an hour the well emitted 80,000 parts per million (ppm) of H2S into the air. At one point emissions were as high as 300,000 ppm. According to air quality standards, 10 ppm is allowable for up to 8 hours, 700 ppm will render one unconscious, and 1000 ppm will cause instantaneous death. The Fairview well emitted levels 300 times the deadly level.

As you can see, H2S is a real problem which needs constant supervision and control. I believe that the Board of Oil and Gas, under the Chairmanship of Mr. Jim Nelson, does act responsibly when given the proper information and guidelines to

follow. These guidelines are concisely and adequately spelled out in the checklist developed by the new MEPA EIS prepared by the Oil and Gas Advisory Council.

In discussions I have had with the NLMOA, they strongly recommended it be implemented within six months. Both the NLMOA and I believe that this is more than enough time for new board members to become familiar with the EIS and feel that a longer delay is potentially dangerous to the health and welfare of Montanans. It is perhaps true that most wells do not seriously effect the environment. But it is also true that each perspective well has the potential for serious harm, particularly when planned near towns, wilderness areas, or in zones where H2S is present.

Only twice out of the 13,080 wells drilled in Montana have MEPA regulations delayed or cancelled drilling operations. This is certainly not a red flag to industry. It is just a look at the potential damages before they occur.

I thank you for the opportunity to address this Committee. The Northeast Land and Mineral Owners Association urges you to vote against SB 201.

NO 30
DATE 2-10-89
HB SB201

Mr. George N. McCabe
Attorney at Law
P. O. Box 2269
Great Falls, Montana 59403

February 23, 1989

Representative Robert Raney
Chairman of the Natural
Resources Committee
THE HOUSE OF NATURAL
RESOURCES COMMITTEE
Capitol Building
Helena, MT 59601

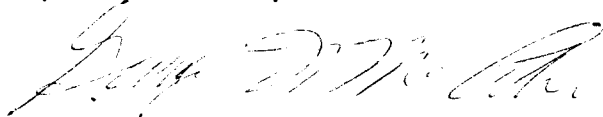
Dear Chairman Raney:

I would like to, at this time, ask for your support and that of your committee concerning Senate Bill 201, which extends the Board of Oil & Gas Conservation Commissions' exemption from the Montana Environmental Protection Act for an additional period of time. I would like to think this extra time could be devoted to making it more certain what impacts drilling has in various areas of the state. Thank you for your consideration.

Very truly yours,

JARDINE, STEPHENSON, BLEWETT & WEAVER, P.C.

By



GNM:cw

EXHIBIT 31
DATE 3-10-89
HB SB 201/2/25/89

Dear House Natural Resources Committee members,

I'm ^{writing} ~~about~~ to urge your opposition to ~~two~~ ^a bills coming before you.

~~The Bill~~, SB 201, would extend the oil and gas industry's exemption from NEPA for two more years. I understand that the industry is claiming that the first two year exemption was too short a time to complete and implement an EIS. I don't buy it. Rather, I think they're just dragging their heels.

For several years I worked in the oil fields of Montana, Wyoming and North Dakota. A phrase I heard often was, "We've got more money than we have time." Tasks often cost more than expected, but never took longer than planned. If the industry "needs more time", I believe that it's only because they chose not to expend appropriate resources. Meanwhile, they've continued to drain profits from Montana.

This industry has enormous potential to harm Montana's environment. They should be held, strictly and immediately, to the law primarily responsible for protecting our home. While working in the oilfields, I constantly saw acts, both intentional and negligent, that were harmful to the environment. I believe that pressures of time and money, the nature of the workforce, and the industry's history make environmental degradation ^{certain} without stringent governmental monitoring and enforcement. Please, let's not delay this any longer. Vote against SB201.

Sincerely, Butch Turk

514 Sherwood St., Msls, MT 59802.

HB 757 "Montana Agricultural Groundwater Protection Act" ~~HB~~ HB 757

1. HB 757 is based on EPA's "Agricultural Chemicals in Groundwater: Proposed Pesticide Strategy: Basis of strategy:
 - +States should have primary role. The specific management plan strategies should be developed at the state level.
 - +Federal role should be development of health-based standards as well as technical assistance to the states.
 - +Differential protection with the groundwater classification system developed by the states.
 - +Emphasis on prevention as opposed to correction--due to the cost and technology required for cleanup.
2. HB 757 fits EPA strategy into existing Montana Water Quality Act [Title 75, Chapter 5]
 - +Water Quality Act based on nondegradation as opposed to health-based standards.
 - +Result is that HB 757 is tailored to compliance with Montana Water Quality Act, making the violation of "reasonable land, soil and conservation practices" instead of Health-based standards the key in enforcement. Reasonable land, soil and conservation practices are defined as the specific agricultural chemical management plans when promulgated by rule.
 - +Assumes the classification system dictated by the Montana Water Quality Act.
 - +HB 757 provides that the standards provided for in the Montana Water Quality Act be the federal health-based standards (MCL's or health advisories) established by EPA. This is current practice by DHES in implementing the Water Quality Act.
 - +Emphasis in both EPA strategy and Montana Water Quality Act is prevention--and HB 757 provides for prevention as the emphasis.
3. HB 757 has been developed over the past year in close consultation with the Montana Department of Agriculture Environmental Management Division and the Montana Department of Health and Environmental Sciences Water Quality Bureau.
 - +Goal is a prevention program that will work.
 - +Expertise of both departments went into drafting this program and the result is a program where each has its appropriate prevention and enforcement roles while jointly administering the program.
4. HB 757 dictates sound scientific methodologies.
 - +Both DHES and DOA are highly professional and this bill does not provide for any deviation from their current high standards of scientific procedures.
 - +Solid science is needed for any enforcement action to withstand the scrutiny of a legal challenge--and thus, these procedures would need to occur irregardless of language in HB 757.
 - +In drafting HB 757, we drew on experience in other states--and other states do not have the degree of professionalism we find in the DHES Water Quality Bureau and the DOA Environmental Management Division.
5. HB 757 proposes that those using ag chemicals should be part of the solution, not the problem. Noone benefits when ag chemicals show up in groundwater.

OUTLINE OF HB 757

EXHIBIT 32
DATE 3-10-89
HB 757

HB 757 -- Statement of Intent [page 1]

+Provides for rulemaking for each department; includes scientific methodologies.

HB 757 -- Section 1--Short Title [page 7]

+Montana Agricultural Groundwater Protection Act

HB 757 -- Section 2--Definitions [page 8]

+Fertilizer is included as an agricultural chemical for the purposes of this legislation. Puts Montana in the role of having a legal basis to institute management plans when EPA develops strategy for fertilizers.

+Includes scientific terms necessary in standard setting and monitoring

+Defines nonpoint and includes in point source "chemical mixing, loading, and storage sites and sites of agricultural chemical spills."

HB 757 -- Section 3--Policy [page 11]

+States goals of HB 757

1. Protect groundwater and the environment from impairment or degradation
2. Allow for proper and correct use of ag chemicals (alternative is ban to prevent entry into groundwater)
3. Provide for management of ag chemicals to prevent, minimize and mitigate their presence in groundwater.
4. Provide for education and training in groundwater protection.

HB 757 -- Section 4--Administration [page 11]

+DHES responsible for water quality standards, monitoring, providing comments on managements plans, promoting research.

+DOA responsible for ag chemical management plans, education, monitoring, promoting research

HB 757 -- Section 5--Rulemaking [page 12]

+Provides for rulemaking relative to responsibilities provided for in Section 4.

HB 757 -- Section 6--Educational Programs [page 14]

+Educational programs to prevent groundwater impairment conducted by DOA and MSU extension service

+Primary change from current situation is redirection of certification and recertification training to emphasize groundwater protection.

HB 757 -- Section 7--Research [page 15]

+Both departments may promote research--no significant change

+Fertilizer ton tax currently providing funds for fertilizer research and education--funds being expended for maximum yield studies--with maximum yield, fertilizer utilized and does not not have opportunity to migrate through soil to groundwater.

HB 757 -- Section 8--Confidentiality [page 15]

+Lone change from current practice is that in DHES, would not be necessary to go to court to prove trade secrets must be kept confidential.

+Positive impact would be to speed up obtaining information and assure that data available when DHES requires the information.

- HB 757 -- Section 9--Groundwater Standards [page 16]
+Provides that federal health-based standards will be the Montana health standards (current DHES practice)
+Provides Montana may set own health-based standards when no federal standard exists or when DHES thinks EPA has not considered recent scientifically valid data in setting standards.
- HB 757 -- Section 10--Monitoring Programs [page 19]
+Monitoring to determine if ag chemicals are present in groundwater or if are in soil and likely to enter groundwater.
- HB 757 -- Section 11--Evaluation and Use of Monitoring Results [page 20]
+Health-based standards are to be provided with monitoring results
+Monitoring to determine if ag chemicals present in soil or water, and determinations by DHES and DOA if management plans violated, standard exceeded, whether trend that chemical presence is increasing.
- HB 757 -- Section 12--Agricultural Chemical Ground Water Management Plans [page 23]
+General Management Plans
1. Recommended best management plans to prevent groundwater impairment; not promulgated by rule.
2. Preventative in nature before detection of impairment
3. Developed in consultation with farmers and ranchers, MSU and other available resources to assure are appropriate and will prevent groundwater impairment.
+Specific Management Plans
1. Mandatory compliance, promulgated by rulemaking process.
2. Developed when ag chemical is found at 50 percent of standard, definite trend of increase presence is validated, EPA proposes to suspend or cancel a chemical's use if management plan is not developed, ag chemical that may migrate to groundwater is being applied in a sensitive area.
3. Developed in consultation with farmers and ranchers in area involved in plan, MSU and other available resources to assure appropriate and will prevent groundwater impairment.
4. Plans shall be reviewed periodically to determine if need to be modified to assure groundwater protection.
- HB 757 -- Section 13--DHES to amend rules [page 27]
+Section fits specific agricultural chemical management plans into Montana Water Quality Act, defining them as reasonable land, soil and water conservation practices.
- HB 757 -- Section 14--Accounts [page 28]
+Establish that either department may set up special accounts for receiving gifts, grants, cost-share funds or other funds for ag chemical groundwater protection purposes. (Prime source would be EPA funds.)
- HB 757 -- Section 15--Special Funding [page 29]
+Provides for additional registrant fees on pesticides and fertilizers to fund the program. See fiscal note for amounts.
- HB 757 -- Section 16 -- Authority to investigate and inspect [page 29]
+Provides authority for DOA to assure compliance.

32
3-10-89
757

HB 757 -- Section 17--Prohibited Activity [page 30]

- + (I) provides no change from current law:
 - a. labels state do not contaminate water;
 - b. currently when in compliance with reasonable soil, water and conservation practices, does not constitute degradation--and with HB 77, specific ag chemical management plans are defined as reasonable soil, water and conservation practices.

HB 757 -- Section 18--Compliance Orders [page 30]

- + Provides for soils cleanup whether or not a violation of HB 757 has occurred--this is prevention of ag chemicals from entering groundwater.

HB 757 -- Section 19--Injunctions Authorized [page 32]

- + Standard language in law

HB 757 -- Section 20 -- Emergencies [page 32]

- + Standard language in law; needed to enable department to act to protect public health, welfare and safety. In accordance with APA.

HB 757 -- Section 21--Violators subject to penalties [page 33]

- + Standard language in law; also prevents both departments from imposing penalty and fines for the same violation--a violation of a management plan also is a violation of the water quality act.

HB 757 -- Section 22 -- Administrative Civil Penalties [page 33]

- + DOA already has this authority in Pesticides Act for misuse of chemicals; no change for DOA as could utilize that authority.
- + DHES does not have this authority under Water Quality Act--this is primary change from existing law for civil penalties.
- + EPA is advocating use of administrative civil penalties as a more expedient means to assure compliance.

HB 757 -- Section 23 and Section 24 -- Judicial Civil Penalty and Criminal Penalties [page 35]

- + Standard language in law.
- + Provide for "teeth" in HB 757. While goal as is EPA goal is prevention, recognize need to have penalties to assure compliance with the law.

Testimony of the Montana Grain Growers Association
on HB757

Mr. Chairman, members of the committee, my name is Larry Johnson. I am a small grains producer from Kremlin and the president of the Montana Grain Growers Association. We support HB757, the Montana Agricultural Chemical Ground Water Protection Act. It is a practical and responsible solution to maintaining the quality of our water in Montana.

The bill is an effort by farmers, the chemical industry, applicators, environmental concerns, and regulatory agencies, to come to grips with the problem or potential problem of groundwater contamination.

As farmers, we have a great deal at stake in seeing that ground water contamination is prevented. Water is an extremely important asset to agriculture. We want to protect that asset for us and future generations. We do not want to use chemicals nor do we want to apply chemicals in a way that will endanger our water.

The chemicals we use in agriculture are very important to us. They provide us with protection against weeds and insects that would otherwise devastate Montana crops. We want to protect our right to use those chemicals until we have other tools to replace them. We can only protect that right by being responsible in our use of chemicals. We cannot use chemicals that will harm our ground water. We cannot apply chemicals in ways that are dangerous to our environment. This bill will help us determine any chemicals or application methods or practices that are not safe.

In short, this bill will give farmers and other pesticide users, applicators, chemical companies, and the State of Montana the standards to protect our groundwater -- to determine if and when groundwater is being contaminated and a way to correct any conditions that are causing contamination.

We urge the passage of this legislation.

EXHIBIT 34
DATE 3-10-89
HB HCB 757

MONTANA DEPARTMENT OF AGRICULTURE

TESTIMONY
ON
HOUSE BILL 757

HOUSE NATURAL RESOURCES COMMITTEE
Friday March 10, 1989

Chairman, Representative Bob Raney:

House Bill 757 establishes the basic foundation to develop a sound and realistic program to prevent the introduction of agricultural chemicals into Montana's groundwater. The bill as structured establishes cooperative educational and preventive programs to protect groundwater. It also establishes various compliance mechanisms to minimize or prevent further introduction of an agricultural chemical into groundwater.

The bill also establishes how state agencies and the university system would work together to maximize expertise and programs in carrying out the responsibilities required in this bill. The issues associated with agricultural chemicals and groundwater, chemicals, soils, climate, geology and water, requires the cooperation and knowledge of various state agencies, the university and federal agencies. This act will require active participation of the public when management plans, educational programs and related activities are being developed, implemented and evaluated.

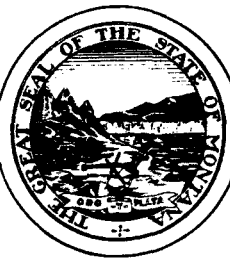
This bill will allow Montana to plan and develop a sound program to address groundwater contamination, instead of reacting to a crises situation when human health, agricultural crops, livestock or the environment are threatened or damaged. We will require technical and financial assistance from EPA to carry out the duties of the bill. It is my current understanding that beginning in fiscal year 1990 EPA will have some funds to assist states in developing and implementing groundwater programs.

The farmers and ranchers of this state would normally be the first individuals impacted by chemicals in groundwater, therefore it is in their best interest to implement preventive measures to protect their drinking water and water used for crop and livestock production. The general public also has the responsibility to properly use and dispose of chemicals used around and in their homes.

The bill provides the basic framework for Montana to develop a realistic program in the 1990's which may have to be revisited in terms of the program and funding as we learn more about agricultural chemicals and groundwater.

DEPARTMENT OF
HEALTH AND ENVIRONMENTAL SCIENCES

EXHIBIT 35
DATE 3-10-89
HB HB 757



STAN STEPHENS, GOVERNOR

COGSWELL BUILDING

STATE OF MONTANA

FAX # (406) 444-2606

HELENA, MONTANA 59620

DHES Testimony In Support of HB 757

Groundwater is a very important resource in Montana and is used for a variety of purposes. It is used by 96% of the public water supply systems in Montana, supplying drinking water to 55% of the population. Almost all rural water users rely on ground water for their source of potable water. Therefore prevention of ground water should have a high priority in Montana.

Agriculture is likewise important in Montana and an important part of agriculture is the proper use of agricultural chemicals. When ag chemicals are applied to crops grown in permeable soils, the potential for chemicals to migrate down to the subsurface and contaminate ground water is great. ^{while} It appears that Montana does not have a widespread ground water contamination problem caused by pesticides in ground water however little is actually known about the quality of ground water in the state. Limited survey monitoring conducted by Dept. of Agriculture has detected low levels of pesticides in ground water in several locations. Concentrations of pesticides measured by the survey generally did not exceeded current drinking water limits. Significant problems with pesticides in ground water have been detected at a few pesticide mixing and loading sites where chemicals are stored and spray machinery is rinsed.

Montana Water Quality Laws are intended to protect both surface and includes provisions to prevent degradation of high quality waters. Nondegradation requires the quality of state water to be maintained at its existing high quality and that no pollutants which may lower the quality are allowed to enter state waters. Nondegradation is often difficult to maintain.

The ^{law} also recognizes that some change in water quality may occur even with proper use of land. Such changes in ground water quality resulting from nonpoint source pollutants from lands where all reasonable land, soil and water conservation practices have been applied would not constitute degradation.

This bill establishes a program whereby agricultural chemical ground water management plans will be developed and implemented. Best management practices will be developed by the Dept. of Agriculture to provide guidance and recommendations for pesticide use that prevent ground water contamination and better define what is "reasonable land, soil and water conservation practices."

The plans will established controls on the use of pesticides and will require monitoring to detect any significant changes in ground water quality. In instances where problems with pesticides in ground water are detected, the management practices or the plan will be modified to protect the beneficial use of the groundwater.

Staff of the Water Quality Bureau has spent considerable time working with the Department of Agriculture and sponsors of this proposed legislation. While passage of this legislation would

mean additional responsibilities for existing staff from both the Dept. of Agriculture and the DHES, the threat to our groundwater resources justifies the effort. Funds generated by increased fees will assist in implementation of the requirements of this act. Money which is placed in the DHES agricultural ground water protection special revenue account will be used to pay for ground water sample analysis. Detailed studies of ground water flow have been conducted in only a few areas. A significant effort and expenditure will be required to investigate and define the ground water flow system in most areas before a management plan can be developed. This resource demand may well dictate the rate at which management plans can be developed.

In general, this bill will enhance the protection of the ground water in Montana by placing better management controls on the use of agricultural chemicals and we asked that you give it favorable consideration.

This bill should not be used to give preferential treatment to one activity having pollution potential. It should be used to allow and ensure proper use of important chemicals and provide environmental protection at the same time



36
DATE 3-10-89
HB #B 757
2507 Roberts

Helena, Mt. 59601
(406) 443-7487

Statement of
John Semple
Executive Secretary
Montana Aviation Trades Association

Before the
Natural Resources Committee
of the
Montana House of Representatives
March 10, 1989

Mr. Chairman:

The Montana Aviation Trades Association (MATA) extends its sincere appreciation to you and the committee members for providing this association with an opportunity to make comment on H.B. 757, titled Ag Chemical Groundwater Protection Act.

During a normal year this Montana industry (Aerial Application) will apply seed, fertilizer, and crop protection chemicals to an acreage value in excess of 3,600,000 acres (30,000 acres each x 120 registered applicators, average). Some acreages will have repetitive applications, increasing the total of acreages treated. Precision and a high regard for safety are paramount, as agricultural aviation has the lowest accident and fatality record of any segment of general aviation. This is according to statistics compiled by the Federal Aviation Administration. We believe the industries' success in safety of flight transfers to pesticide use safety via our national association's (NAAA) operation SAFE program and ever improving state conducted certification and training programs.

On this basis and for the record, MATA supports HB 757. The concept of best management practices or specific area management plans allows for effective chemical crop protection along side groundwater protection.

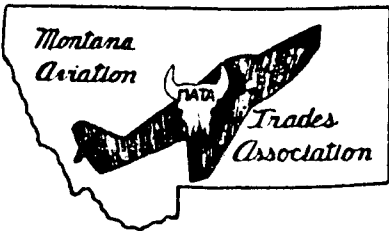


EXHIBIT 36
DATE 3-10-89
HB 757
2507 Roberts
Helena, Mt. 59601
(406) 443-7487

Specifically, mixing/loading sites and possibilities of secondary confinement, two areas of great concern to aerial applicators, will cost the industry under this bill. This shows our willingness to help protect a natural resource, groundwater.

Other areas of the act, including monitoring, research, education, groundwater classification and standards provide for a common sense approach to management of agricultural chemicals to prevent their entry into groundwater. MATA agrees with the purposes of this bill; that being, to protect groundwater, to provide for education and management practices, and above all, to allow for the proper use of agricultural chemicals which are valuable and necessary tools for agricultural production and disease control, and therefore, ultimately, an affordable, plentiful, nourishing food supply.

MATA thanks the chairman and the committee members for your interest in our comments regarding HB 757. Rather than taking valuable time from your schedules with additional testimony, I am available for answers to any specific questions the committee may have about aerial application, MATA, and HB 757.



P.O. Box 4507
Helena, MT 59604

TESTIMONY OF THE MONTANA WEED CONTROL ASSOCIATION
for the House Natural Resources Committee on
House Bill 757
Friday, March 10, 1989

Chairman Raney and Committee Members:

The Montana Weed Control Association sees the issue of ground water contamination as one of the most important problems facing Montana agriculture today and in the future. Weed and pest management is critical to the livelihood of Montana ag producers and we must start now to address the issue of potential ag chemical contamination of our ground water. We cannot protect ground water to the detriment of the state's number one industry, agriculture.

We fully support increased research and development of sensible, workable solutions to ground water contamination and, more importantly, prevention of ground water contamination. The proposed Ground Water Protection Act addresses the issues we find most important to help protect Montana agriculture as well as our valuable ground water resource and we fully support it.

Our Association is beginning an active program to solicit support of those most needed in the research effort to target their efforts towards this program. To do this we are asking representatives of Montana State University, Montana Tech, and the Montana Department of Agriculture to address our next Board of Directors meeting on their activities in this area (see attachment).

We urge the Natural Resources Committee to take the important first step in supporting passage of this bill. We cannot afford to wait for two more years to study the issue. It is upon us now.



37
DATE 3-10-89
HB HB 757

POST OFFICE BOX 4507 • HELENA, MONTANA 59604

March 7, 1989

TO: Montana State University
Jim Welch
Russ Munfifering
Leroy Luft
Charles McGuire
Bill Inskeep
Hayden Ferguson
Jerry Nielsen
Jim Nelson
Greg Johnson

Montana Tech
Marvin Miller

MT Dept. of Agriculture
Everett Snortland
Gary Gingery
George Algard
Steve Baril
Barbra Mullin
Tom Deluca

FROM: The Board of Directors, MT Weed Control Association

At our Board meeting Feb. 23-24 we discussed the apparent lack of aggressiveness by MSU, MT Tech, and the MT Dept. of Agriculture regarding the groundwater contamination issue in the state.

We realize that several research projects are in progress. However, to our knowledge, little or no information is being delivered to the pesticide users in Montana. We urge you to respond to this issue in a coordinated, cooperative effort and make it the priority issue that it needs to be. To help facilitate this effort we would request that:

1.) Representatives of MSU research, MSU Extension, MT Tech and the MT Dept. of Agriculture each give us a 15-minute update of your progress and future plans at our Board meeting in Lewistown on May 4 and 5.

2.) You provide expertise for our Weed District Supervisor Training Program to be held in Bozeman on April 3.

Please contact Pete Fay at MSU (994-5061) with your reply. Thank you for your attention.

TESTIMONY OF DAVID OIEN ON
HB 757, AGRICHEMICAL GROUNDWATER PROTECTION
BEFORE THE HOUSE NATURAL RESOURCES COMMITTEE
MARCH 10, 1989

Chairman Raney, members of the committee, my name is David Oien; I am a diversified farmer from Conrad, and a member of the Agriculture Task Force of the Alternative Energy Resources Organization (AERO). AERO is a statewide private, non-profit, membership organization dedicated to sustainable agriculture, renewable energy, and community-based development. AERO has over 400 members, most of whom are farmers and ranchers.

I oppose HB 757 because it does not meet the following minimum criteria--established by the farmers and ranchers who comprise AERO's Agriculture Task Force--for what we think should be in a good groundwater protection bill.

1. RECOGNITION OF OUR RESPONSIBILITY TO FUTURE GENERATIONS.
"We must protect all groundwaters of the state regardless of existing beneficial uses in order to provide for whatever future beneficial uses the natural water quality allows." (Oregon)

Point. This bill compels us to selectively protect our groundwater, and in fact it provides for government sanctioned degradation of portions of aquifers. As a rural water user, I find this unacceptable.

2. PROTECTION FROM ALL KINDS OF GROUNDWATER POLLUTION--including point and nonpoint sources from pesticides and nitrogen fertilizers.

Point. This bill makes no provision for cleaning up groundwater polluted from unidentifiable sources, or contaminated from proper field use of chemicals. As a rural water user this makes me nervous. And that the bill does not require action to lessen the threat to our groundwater from fertilizer, which I think is significant, is inexcusable.

3. A COMMITMENT TO PREVENTING CONTAMINATION.

Point. If I'm going to be expected under this bill to comply with groundwater management plans, I want some assurance the plans will be practical, effective, and feasible. I'm not convinced this bill provides for the resources necessary to give producers plans that will work--both for the producer and for protection of the groundwater. The expertise, manpower, research and demonstration that these plans will depend on is just not here.

4. PUBLIC PARTICIPATION AND ACCESS TO INFORMATION. Even though management plans will be adopted by rulemaking, which provides the opportunity for public comment, I think the management plans should originate from site-specific planning committees of local producers, other applicators, local water users, chemical manufacturers, and public agency staff. It seems appropriate that those whose activities are causing the problem and whose water is threatened ought to be part of the solution. Local planning committees would also address in part the issue of overburdened state agencies and inadequate funding.

5. ADEQUATE FUNDING TO GET THE JOB DONE.
It's just not in this bill.

Point. A tax on manufacturers based on their gross sales of agricultural chemicals in Montana would raise more money and place the burden for addressing the problem more proportionally on the specific sources of the problem, that is, those chemicals entering into the environment in the greatest amounts. The contaminating products should fund the necessary research, demonstration, and education components of a truly preventive program.

In summary, HB 757 does little to help Montana producers develop the tools we need to begin reducing the volume of high-cost chemicals we apply to the environment.

Thank you.

TESTIMONY OF NANCY MATHESON ON
HB 757, AGRICHEMICAL GROUNDWATER PROTECTION
BEFORE THE HOUSE NATURAL RESOURCES COMMITTEE
MARCH 10, 1989

Chairman Raney, members of the committee, my name is Nancy Matheson; I am representing the Alternative Energy Resources Organization (AERO). AERO is a statewide private, non-profit, membership organization dedicated to sustainable agriculture, renewable energy, and community-based development. AERO has over 400 members, most of whom are farmers and ranchers.

AERO opposes HB 757 because its basic premise contradicts what should be the basis for an effective and cost-effective groundwater protection strategy for Montana, that is, prevention of groundwater contamination. This bill would have us react to contamination rather than prevent it in the first place. If nothing else has, Superfund should have taught us how un-cost-effective a reactive approach is. Also, this bill is not funded adequately--and its very limited dollars may well be used up by various requirements in the bill before any protective action has been taken. We think Montanans, and rural citizens who more than anyone depend on the groundwater resource, deserve the best groundwater protection our collective ingenuity can devise.

At the same time, AERO commends the originators of this bill for recognizing the need for groundwater protection in Montana, and for acting on that recognition and creating with this bill a basis for debate and action.

It appears that HB 757 would work something like this: No standard will be set until a chemical is found in the groundwater, or until the state can confidently predict that it will reach groundwater; language in the bill subjects this prediction to a high standard of scientific certainty that may be impossible to meet because prediction of the fate and transport of agricultural chemicals is expensive and not an exact science; then the bill does not require the state to monitor until a standard is set--thus, we have what appears to be a chicken and egg situation. It is extremely difficult to predict fate and transport of ag chemicals, but it is clearly impossible to do so without a good data base. Yet, this bill says the state cannot compel people to monitor or share monitoring information without first setting a standard--and thus it goes on in circles! Let me sum this up: We can't look for chemicals until we adopt standards and, given that the fee structure imposed is extremely small, in practice we won't adopt standards until we've found chemicals. This bill is clearly unworkable.

Now the fact is, AERO likes the idea behind one of the key strategies in this bill: chemical management plans. But the problem here is that in this bill the management plans function as responses to problems--not as prevention tools. The inadequate funding means the state will prioritize, but the bill does not make clear how priorities will be set. Rather than trying to prevent problems by identifying the greatest threats to the groundwater, the management plan development process will likely end up chasing problems around--happening only after contamination has been found.

The state of Oregon just gathered the kind of ag chemical fate and transport data this bill describes in the statement of intent and elsewhere. It cost Oregon \$500,000 to characterize one chemical (dacthal) just in eastern Oregon! This is what we're looking at with this bill. This money didn't go for clean-up, or for prevention. \$500,000 bought a description of the problem.

Standards, on which this bill relies heavily, can be valuable for helping us understand what is occurring in the environment and for informing the public, and as guidelines or triggers for corrective action. But because this bill uses standards as a prerequisite for action, standard-setting ends up setting the pace for pollution control. What should set the pace is our concern for the groundwater resource and our commitment to its protection. We must not use standards as the sole basis for action or as representing acceptable levels of pollution. Our first line of defense must be control at the source.

Adopting standards for some chemicals will be easy--there are federal promulgated, nonpromulgated, and interim numerical standards for quite a few pesticides. These standards, by the way, are not all health-based but the bill does not ask us to make distinctions based on this fact. For other chemicals, like those for which chronic toxicity tests have not been done, standard-setting will be very difficult. And the issue of cancer risks does not appear in this bill. Are we accepting one in a million or one in a hundred extra cancer deaths from pesticides in our groundwater? The bill does not tell us.

Groundwater management plans are the way to go--when they are used to control pollution at its source. Management plans can help us reduce the volume of chemicals we use in the first place, through classical Integrated Pest Management (IPM) and using legumes in our crop rotations, for example. But, reducing the volume of chemicals we use is neither encouraged by this bill, nor is it even acknowledged as desirable.

Groundwater management plans are the way to go--but we have to recognize that many BMPs that offer good potential for protecting our groundwater have not been well developed. Producers cannot be expected to change how they farm without adequate information. There aren't the resources in this bill to better develop the more complex BMPs, ones that would rely on, for instance, reduced-use of chemicals like IPM and cereal-legume rotations. (The latter is actually a poor example because it assumes fertilizers would be addressed, which of course they won't be.)

Groundwater management plans are the way to go--if producers are provided with the information they need in a form that is useful and practical. If we expect producers to comply with management plans, a well-developed demonstration program is a prerequisite. Demonstration has long been a basic element of Soil Conservation Service programs for producers. Lack of resources for demonstrations could leave farmers and ranchers unable or unwilling to comply--putting them in a real bind.

Groundwater management plans are the way to go--if they address the threats to our groundwater. Fertilizer management plans are not required by this bill "until EPA implements a program to protect groundwater from fertilizers." Yet according to the EPA Office of Groundwater Protection, the EPA has no ongoing program, no study, and no plan for a regulatory or voluntary fertilizer-related program. The EPA Office of Policy and Planning Evaluation "might be interested in the subject." [from a phone conversation with EPA officials on 3/9/89] Not very encouraging is it? Yet there is compelling evidence that nitrates from fertilizer N should be of concern to Montanans, including those in areas of heavy clay soils. (I will be glad to share the sources of some recent studies if the committee so requests.) This bill actually prohibits action when the source of nitrates is found not to be from commercial fertilizer. Whose interests are served by prohibiting a response to nitrate from any agriculture-related activity such as manuring or feed lots? Surely, rural water users deserve as much as municipal water users to have their children protected from blue baby syndrome, hypertension and sudden infant death syndrome, and their adults from gastric cancer.

Groundwater management plans are the way to go--but not if they are used to protect selected uses of groundwater instead of the full resource that belongs to all Montanans. For certain groundwater classifications, management plans will actually strive for less protection under this bill.

Groundwater management plans are the way to go--but not if they are used to protect one part of an aquifer without equally protecting other parts of the aquifer. Groundwater moves, after all, and if some of it is going to be classified to allow for more pollution we better be sure it is not going to end up someplace we don't want it--like drinking and surface water. Since groundwater classification in Montana can be based on a single water sample, water classified to allow for more pollution may well end up mixing with water of a higher classification in the same aquifer. We could easily spend more than the millions of dollars classifying aquifers that tiny Connecticut has. But we won't be buying solutions to problems. Classification, which provides guidelines for much of the action called for in this bill, is a bad idea borrowed originally from surface water protection strategies for which it wasn't such a bad idea. But surface and ground water do not behave alike, making this approach inappropriate for groundwater.

So, even though AERO likes the idea of groundwater management plans, we oppose this bill because it so fundamentally contradicts the idea of preventing contamination at its source, particularly through the specific use it makes of standards and groundwater classification that I've described. Let's not pass a law that won't do the job for us.

Finally, AERO strongly recommends an interim study that would allow for consideration of a more comprehensive, more cost-effective, and more feasible approach. Because groundwater belongs to all Montanans, such a study must incorporate at every level and at every step interested citizens, organizations and public agencies working together with the legislature. AERO is committed to being at the table.

And again, I'd like to thank Pam for all her hard work which has generated this important policy debate, and created the potential for continued debate and public awareness of groundwater issues.

Thank you.

Effective National Groundwater Protection Legislation

By Velma Smith

From Long Island to the Big Springs Basin of Iowa, the signs are clear: pesticides are making their way into groundwater. Monitoring programs are far from exhaustive and the national database remains patchy, but EPA states that "... enough information has been reported to indicate the problem is widespread in certain parts of the country."¹ Stories of EDB in Florida wells, DBCP in Hawaii, and aldicarb in Wisconsin have been recounted and reenacted throughout the U.S., and the myth that "properly applied" pesticides will not pollute groundwater appears to be largely debunked.

So, with erroneous, old assumptions crumbling under scrutiny, it might appear that federal policymakers will take aggressive action to institute far-reaching solutions. Perhaps ... but not without difficulty.

While our nation's lawmakers are being pressed for action by a few of their own, notably Senators Patrick Leahy (D-VT), Dave Durenberger (R-MN) and Congressperson Jim Oberstar (D-MN), the pesticides in groundwater debate in Washington still seems to bog down in an existing law that has little to do with effective environmental protection.

Although the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) governs the marketing of pesticides and speaks to their use, its machinery is driven not by a protection goal but by a huge bias toward maintaining the availability and saleability of individual agricultural chemicals. With its unwieldy procedural maze, its lack of authority for citizen suits, the unique requirement for government payment prior to banning of dangerous chemical products, and reliance on a cost-benefit standard, FIFRA tells us that it is a law incapable of addressing chemical threats to groundwater.

Velma Smith is the director of the Groundwater Protection Project at the Environmental Policy Institute; 218 D Street SE; Washington DC 20003. (202) 547-5330.

Moreover, it grows increasingly clear that the FIFRA regulatory scenario, weak as it is, was crafted to address acute, immediately observable ill effects. The law and its designated implementors at EPA are severely handicapped when it comes to dealing with subtle, insidious effects of chronic exposure to low doses of toxic chemicals. But it is precisely this type of health effect which is the greatest public concern with groundwater pollution.

Thus the first and probably most crucial legislative need is for policymakers to look beyond the existing FIFRA framework for solutions.

Meaningful answers must then derive from a commitment to public health protection, a recognition of the uncertainties about the toxic effects of chemicals, an understanding of the nature of groundwater, consideration of private well users, respect for the needs of the nation's farmers, and thought to future generations.

Several basic concepts are key to any effective solutions.

A Goal of No Degradation

First, the lessons of Superfund* have taught us the costs of contamination. Whether the source be landfills, storage tanks, or pesticide application, groundwater cleanup is difficult and expensive at best. Prevention of pollution is our only rational policy option.

The present federal laws lack a clear commitment to prevent rather than respond to groundwater contamination by agricultural chemicals. The absence of a goal of nondegradation reflects more than mere oversight and has left room for a policy which sanctions contamination. Supporters of "standards" of degradation argue that the press of economics allows us only to set the level of pollution that can be declared acceptable. A goal of no degradation is dismissed as impractical.

But underlying that "pragmatic" approach is simply a determination that

we continue to use groundwater as a free, public sewer system. That approach turns a blind eye to uncertainties about the health effects of chemical exposure, dismisses the complexities of the hydrologic system, and shrugs off responsibility to future generations.

In place of a timid "partial contamination" goal, we need from Congress a clear resolution to strive for the elimination of toxic pollution; a determination that no avoidable pollution is "acceptable"; and a commitment that will drive resources and ingenuity toward crafting better means of pollution prevention.

Protection for All Groundwater

Along with a goal of nondegradation, we need a federal program that seeks protection for *all* of our groundwater resources.

Here, an old theme from the landfill debate has been resurrected: "Pollution is not pollution until it reaches the neighbor's tap." Its proponents lost their argument in the reauthorization of federal hazardous waste legislation. Nonetheless, the chemical industry is now poised to offer this sleight-of-hand trick once again.

Their argument states that some groundwater will be used for drinking; the rest is fair game for pesticide waste disposal. Somehow, the states and the federal government will understand sufficiently the complexities of groundwater fate and transport throughout our agricultural areas. Predictions of future groundwater needs will be made, and pesticide users will then decide on the appropriate level of caution in the appropriate levels.

That policy grossly oversimplifies scientific and technical realities, ignores our inability to predict or control future pumping patterns, and is doomed to failure. Federal law must not impose artificial distinctions on the groundwater flow system; it must seek to protect the full resource.

Monitoring Requirements for Pesticide Makers

Third, effective federal legislation

*Superfund, a national program to clean up toxic waste, was created by the Comprehensive Environmental Response, Compensation, and Liability Act.

The Great Groundwater Contamination Debate

By Richard Kelley

In this thought-provoking article, Richard Kelley challenges the most common approach to pesticide contamination of groundwater: regulation by setting of acceptable standards of groundwater degradation. In a second article ("No Further Degradation," p. 11), Kelley describes the Iowa legislation that embodies an alternative approach: prevention of groundwater contamination by education, reporting, and alteration of practices.

The comparative results of Iowa's new groundwater legislation and California's different legislation (see "Can Pesticide Leaching be Halted?" p. 13) need to be studied soon . . . and acted upon.

—Ed.

Groundwater quality has become the environmental issue of the decade, and from Washington, DC to Hawaii the debates have begun over how serious the problem is and what the solution(s) should be. The debates are over in Iowa, at least until 1989 when Iowa's new groundwater protection program must be reviewed and a report made to the legislature on what progress has been made in protecting the resource. In the course of developing Iowa's program, two clearly differing viewpoints regarding the issues were evident.

Although every aspect of the groundwater bill was debated at length, one area was more hotly debated than any other: that of agricultural chemicals in groundwater. This article describes briefly the arguments used by opponents of the 1987 Groundwater Protection Act, followed by the responses used by its supporters.

Detection Thresholds

There are those who suggest that the concentrations of chemicals observed in

Richard Kelley is an Environmental Specialist with the Iowa Department of Natural Resources. He has worked in Iowa's groundwater programs for the last seven years. Recently, he co-authored the Iowa Groundwater Protection Strategy 1987.

groundwater are very, very small and that such small concentrations represent recent advances in analytical technology. Such arguments suggest that the chemicals have been present in groundwater for long periods of time and if new technology allows us to identify them, it is not sufficient grounds for concern.

In fact, the technology in use in Iowa has not changed since the early 1970s. As early as 1974, researchers at Iowa State University were reporting atrazine (in the parts per billion range) in the shallow groundwaters of central Iowa and the finished water of several of the state's larger public water supplies.¹

"Although every aspect of the groundwater bill was debated at length, one area was more hotly debated than any other: that of agricultural chemicals in groundwater."

We are now routinely reporting the occurrence of human-made chemicals in the groundwater because of the state's effort to look for the compounds. Until 1981, except for the Iowa State University study, little or no monitoring for synthetic organic compounds was conducted in the state.

The concentrations of human-made chemicals reported in groundwater are low, generally less than 10 parts per billion.² However, low concentrations do not mean that they are safe. In fact, low concentrations of a few of these compounds are clearly a threat to human health. For many other chemicals we simply do not know if they are safe. If our objective is to protect human health and the groundwater resource, the only reasonable approach, because of the nature of the products and because they do not occur naturally, is to

be concerned and cautious about how we release these compounds into the environment.

Human Health Effects

Many people have suggested that perhaps Iowa is being too cautious in its approach to the problem. After all, there is not one body of data to show that exposure to these compounds in low concentrations has resulted in adverse human health effects. Indeed, you cannot show a cause and effect relationship between exposure and adverse human health.

In fact, you cannot show a direct cause and effect relationship between smoking and adverse health effects. However, reasonable people who have looked at the data agree that smoking will indeed adversely affect health. In the case of pesticides in groundwater we do see a strong association between exposure and adverse health effects. This growing body of inferential data does warrant our attention and concern.

Costs of Pesticide Registration

Chemical companies spend millions on research to get their products on the market. Some of this research is conducted to meet the requirements of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The data from this research are submitted to EPA who, based on the data, approves the product for use. Some argue that the data has to be unquestionably good if that much money was spent to obtain it. Thus, if EPA, using that data, approved the product for use, it must be safe.

It should be pointed out that, with

"The cost of getting a [pesticide] to market is the cost of doing business in this nation and that cost is passed on to the consumer."

LimBil 42
DATE 3-10-89
HB 157

HOUSE BILL 757

Proposed Amendments of Trout Unlimited

Page 2, Line 15: Delete everything through page 6, line 23.

Page 7, line 25: Insert " (contamination) means the direct or indirect introduction into ground of any agricultural chemical caused in whole or in part by human activities." Change the numbering of definitions after this accordingly.

Page 8, Line 3: delete everything through line 5 and insert: "which occurs beneath the surface of the earth in a saturated geological formation of earth or soil."

Page 8, Line 6: Delete everything through Line 11. Everywhere in the bill where the term "ground water impairment" appears, replace it with "contamination".

Page 10, Line 10: Insert "(19) (Preventive action limit) means a level of contamination at which preventive action will be taken at the early signs of contamination to ensure that standards for an agricultural chemical are not attained or exceeded. Preventive action limits will be 20% of the standard."

Page 11, Line 9: After "chemicals" delete everything through line 10, and insert "and to reduce, where possible, the level of agricultural chemical use."

Page 11, Line 118: after "protection", insert ",", delete "and" and after "use", delete "." and insert ", and in the use of agricultural methods alternative to agricultural chemical use."

Page 19, Line 16: delete "may" and insert "shall"

Page 20, Line 8, delete "preliminary"

Page 20, Line 9: after "to", delete everything through "on" on line 10.

Page 20, Line 10: Insert "to" before "the public".

Page 21, Line 3: after "(a)", delete "whether"

Page 21, Line 4 after "water", insert "and whether the concentration of that chemical".

Page 21, Line 7: After "(ii)", Delete all of line 7 and line 8, and insert "any action level for the agricultural chemical:"

Page 22, Line 15, Delete all of subsection (6).

Page 22, Line 14: after "when", delete "the level of".

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Page 23, Line 15: after "water", insert "." and delete the remainder of the sentence through line 17.

Page 24, Line 11: Delete this sentence.

Page 24, Line 11: Insert the following:

"(4) A person under whose land contamination by agricultural chemicals has been detected shall inform any prospective purchaser of the presence of the chemical and the levels at which it has been detected.

(5) a person whose land is within an agricultural chemical ground water management plan shall inform any prospective purchaser of the existence of the plan and of his specific obligations under the plan."

Page 25, Line 15: Insert "(c) Procedures for the initiation of preventive action if a preventive action limit for an agricultural chemical is reached."

Page 26, Line 10: delete "and".

Page 26, Line 11: delete "." and insert ";".

Page 26, Line 12: Insert "(k) alternative soil fertility practices."

Page 26, Line 22: delete "is not required to" and insert "may"

Page 26, Line 24, after "plan", delete everything through "fertilizers" on line 25.

Page 27, Line 5: after ".", delete everything through "section." on line 7.

Page 30, Line 8: after "impairment" insert "." and delete everything after "impairment" through line 17.

Page 30, Line 20: delete "may", insert "shall".

Page 31, Line 2: after "." delete everything though line 5.

Page 32, Line 8: Insert the following:

"(6) If the department determines under subsection (5) of this section that the person does not have the financial resources to pay for the cleanup, the department shall institute an action against the manufacturers of the agricultural chemical, for the cost of necessary cleanup."

Page 32, Line 25: After ".", insert "at a minimum, an emergency exists when a standard has been reached or exceeded."

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Page 33, Line 9: Delete everything through line 15.

Page 33, Line 20: Delete subsection (5) in its entirety.

Montana Audubon Legislative Fund
Testimony on HB 757
House Natural Resources Committee
March 10, 1989

Mr. Chairman and Members of the Committee,

My name is Janet Ellis. I am here today representing the Montana Audubon Legislative Fund. The Audubon Council is composed of nine chapters of the National Audubon Society and represents over 2500 people statewide.

The MT Audubon Legislative Fund opposes HB 757.

We oppose HB 757 because we feel that it does not address or ignores several basic principles which are necessary to consider in a groundwater protection plan. Five of these basic premises are as follows:

1. A groundwater protection program should do just that: PROTECT. It should rely on protection and prevention as opposed to clean-up and correction.
2. A groundwater protection program should not rely on standards to serve as a level of acceptable contamination. Standards should be utilized to prevent rather than respond to contamination by triggering appropriate investigation and action before the concentration of contaminant attains the level of the standard.
3. Groundwater protection cannot ignore the interconnectedness of groundwater to surface water.

In sect. 2 #6 (p.8 lines 2-5), the definition of "groundwater" is limited to beneficial uses which does not take into account the fact that groundwater affects surface water whether or not anyone is putting it to "beneficial" use - and so needs to be protected.

4. A groundwater law must aim to protect the full resource and not just selected segments of it.

Many times throughout this bill, the classification of water is used. (For example, p. 3 lines 17,18, "ground water has beneficial human or environmental uses based on its classification.") The problem with classification is that the groundwater, surface water, all water is interrelated. We need protection for the entire resource, not just parts of it.

5. We cannot wait for standards and toxicological information on chemicals before we work on pollution control. Very few chemicals have had standards set. It is an expensive and lengthy process. To expect our state to do this, it would require both money and facilities - another impediment to the process. A process that needs to begin now with source controls, and not wait for water quality standards.

These are some of the major points that we think a groundwater protection bill should consider. HB 757 has many problems including inadequate funding for monitoring propositions, problems in determining specific standards on which this bill would rely, looking at the problem in pieces as opposed to a whole, as well as not meeting the basic framework outlined above.

Audubon urges you to vote "Do Not Pass" on HB 757.

Thank you.

NORTHERN PLAINS RESOURCE COUNCIL

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TESTIMONY OF THE NORTHERN PLAINS RESOURCE COUNCIL ON HB 757.

Mr. Chairman, Members of the Committee,

My name is Brant Quick. I am a registered lobbyist with the Northern Plains Resource Council (NPRC), and am here to present testimony on their behalf.

NPRC neither supports nor opposes HB 757. We believe that there are a number of positive and negative aspects to this bill. We would like to commend the promoters of this bill for recognizing the need to protect one of Montana's most valuable resources - our groundwater. This has long been a priority for NPRC. We also realize that the efforts of those who developed this bill have been substantial.

One of the most important parts of this legislation is the development and use of management plans. The use of management plans and better education should be an integral part of any agrichemical groundwater protection bill. However, we feel such plans may be ineffective as called for in HB 757 because of what we consider to be significant flaws in the bill.

Perhaps the most serious problem is that the bill is more reactive than preventive. Once groundwater contamination is detected, levels are almost sure to increase even if all chemical application is discontinued because chemicals already in the soil will continue to seep into aquifers.

Further, the measures called for by HB 757 do not appear to be cost-effective. The cost of adequately monitoring for non-point source pollution would be far more than is called for in this bill. Also, cleaning up an aquifer which is already contaminated is cost prohibitive, if not impossible.

Finally, it is our opinion that further analysis of the problems, and more importantly, the solutions is needed. We support the enactment of a study resolution to look closely at some of the more innovative, preventive and cost-effective approaches being used in other states. NPRC is very committed to public involvement. For this reason, we believe such a study should include public participation as an integral part of the development process.

Thank you for your consideration.

EXHIBIT 45
DATE 3-10-89
HB 754
Revised with original

Riparian Areas

What are riparian areas?

- *Riparian areas are the areas immediately surrounding streams, springs, seeps, ponds, potholes or other bodies of water.
- *They have very poorly drained soils and support plant communities that are tolerant of a very high water table and resistant to flood disturbance.
- *Along live streams, riparian vegetation stabilizes the erosion and deposition of sediment and maintains the quality of shallow floodplain aquifers.

Why are riparian areas important?

- *Riparian areas are very productive: they support a greater concentration of wildlife species than any other type of habitat.
- *Big game uses riparian thickets for hiding cover, for important winter browse, and as migration corridors between blocks of unsheltered land. Development close to these corridors discourages game from using them, putting stress on already limited habitat.
- *While waterfowl and shorebirds are obviously dependent on riparian areas, many other birds are too: in western Montana, 89 of 151 land bird species use riparian habitat for nesting; 32 of the 89 species will breed only in riparian areas.
- *Riparian vegetation maintains good water quality and fish habitat by shading pools to maintain temperature, providing fish cover near banks, holding soil in place, and supporting biological activity that naturally filters runoff into streams.
- *Healthy riparian ecosystems are an important visual/aesthetic resource for Montanans and tourists.

Are riparian areas in need of conservation measures?

- *Yes. Riparian areas are threatened by a wide variety of land uses. It is the fastest disappearing of habitat types.
- *Riparian areas are very limited to begin with. In western Montana, one half of one percent of the land area is riparian. Even less land is riparian in the drier east part of the state.
- *Development of riparian areas can occur from a variety of sources: poor forest practices, development of transportation systems (roads & railways), cropping and pasture development that destroy riparian areas, etc. Physical rehabilitation of riparian areas that have degenerated or been destroyed can go a long way toward improving these critical areas.
- *Water pollution problems from long-term planning for residential waste disposal can overload groundwater with nutrient-rich wastes, which then seep into streams. Cases in Montana where this has occurred have been both biologically detrimental and aesthetically unpleasant.
- *Dewatering stream channels can have detrimental impacts for a variety of reasons: pollutants are no longer diluted, fish populations can not be supported, or streamside vegetation can not be supported. Ways to allow water to remain in the stream are critical to the long term maintenance of Montana's riparian areas.

100 BEST TROUT STREAMS

Northeast

Connecticut

Housatonic River

Maine

Machias River
West Branch of the Penobscot River

Massachusetts

Quashnet River

New Hampshire

Upper Connecticut River

New York

West Branch of the Ausable River

Beaverkill River

Delaware River

Esopus Creek

Neversink River

Willowemoc Creek

Pennsylvania

Fishing Creek

Letort Spring Run

Slate Run

Spruce Creek

Vermont

Battenkill River

Southeast

Georgia

Chattahoochee River
Conasauga River

Maryland

Big Gunpowder Falls

North Carolina

Davidson River
Nantahala River
South Mills River

South Carolina

Chattooga River

Tennessee

Clinch River
Hiwassee River
Little River
South Holston River

Virginia

Rapidan River
Smith River

Midwest

Arkansas

White River

Michigan

Au Sable River
Boardman River
Little Manistee River
Pere Marquette River

Missouri

Crane Creek
Current River
North Fork of the White River

Wisconsin

Black Earth Creek
Brule River
Lawrence Creek
Timber Coulee Creek
White River

Rocky Mountains

Arizona

Colorado River

Colorado

Dolores River
Frying Pan River
Gunnison River
Roaring Fork of the Colorado River
South Platte River

Idaho

Henry's Fork of the Snake River
Kelly Creek
Lemhi Creek
Locha River
Middle Fork of the Salmon River
Silver Creek
South Fork of the Boise River
South Fork of the Snake River
Wood River

Montana

Armstrong's Spring Creek
Beaverhead River
Big Hole River
Bighorn River
Bitterroot River
Gallatin River
Lower Madison River
Middle Yellowstone River
Missouri River
Nelson's Spring Creek
Rock Creek
Smith River

New Mexico

San Juan River

Utah

Green River

Wyoming

Firehole River
Gibbon River
Green River
North Platte River
Upper Madison River
Upper Yellowstone River

EXHIBIT 46
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HB 754

West Coast

Alaska

Agulukpak River
Copper River
Goodnews River
Kanektok River
Naknek River
Newhalen River
Sitkoh Creek
Situk River
Talachulitna River
Talarik Creek
Togiak River

California

Fall River
Hat Creek
McCloud River
Smith River
Upper Sacramento River

Oregon

Deschutes River
North Fork of the Umpqua River
Williamson River

Washington

Hoh River
Quinault River
Sauk River
Sol Duc River

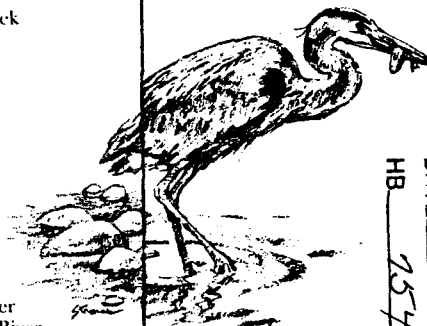


EXHIBIT 46
DATE 3-10-89
HB 754

Gaylord R. Alexander

Gerald A. Almy

George Anderson

Robert A. Bachman

John Bailey

Christopher M. Batin

Robert J. Behnke

Gary A. Borger

Silvio Calabi

J. Leon Chandler

Russell Chatham

Yvon Chouinard

Donald A. Duff

David James Duncan

Dave Engerbretson

Michael Fong

Keith Gardner

Jerry Gibbs

John Gierach

Delano R. Graff

Jack Hemingway

David L. Hughes

Robert L. Hunt

Bob Jacklin

Verlyn Klinkenborg

Thomas McGuane

Patrick F. McManus

R. Barry Nehring

Geoffrey Norman

Leigh H. Perkins

Datus C. Proper

AND THE PEOPLE WHO CHOSE THEM...

Ed Van Put

John Randolph

John Rasmus

Nathaniel Pryor Reed

Terry D. Rocklows

E. H. Rosborough

Tom Rosenbauer

Bob Saile

Monte Seehorn

Mary Sherman

Gary Soucie

Doug Swisher

Spencer E. Turner

Robert Urich

Charles E. Waterman

Ray J. White

Dave Whitlock

Leonard M. Wright, Jr.

Lee Wulff



MONTANA FARM BUREAU FEDERATION

502 South 19th • Bozeman, Montana 59715
Phone: (406) 587-3153

EXHIBIT 47
DATE 3-10-89
HB 754

BILL # HB 754; TESTIMONY BY: Valerie Larson

DATE 3/10/89; SUPPORT _____; OPPOSE oppose

Mr. Chairman, members of the Committee, for the record, my name is Valerie Larson, representing over 3500 Farm Bureau members from throughout Montana.

Mr. Chairman, House Bill 754 is an attempt to circumvent many basic and Constitutional guarantees to private citizens, especially private property owners, who either by choice or by chance, happen to have their place of business located on or by any river, stream, creek, or other body of ~~watex~~ flowing water in Montana.

This bill would seriously impair and infringe upon the right of any rancher or other property owner to use his "place of business" without the Department of Fish, Wildlife, and Parks, and thus, every fisherman, sportsman, and recreationalist in the state and nation busy usurping his legal and Constitutional right to manage his own business. Its easy for those who have no financial interest or consequence to make decisions for someone else.

Farm Bureau has long been in the forefront all across this country in the protection of private property rights. This also extends to private property along all streams and rivers in Montana. Farm Bureau opposes any governmental action that infringes on an individual's right to own and manage private property. Any erosion of that right weakens all other rights guaranteed to individuals by the Constitution.

While the concept of the bill may be admirable, the implementation of this bill would trample private property rights, lead to confrontation where it isn't necessary, and create a whole new layer of bureaucracy to compete with the layers of bureaucracy that are already competing to justify their existence.

Mr. Chairman, Farm Bureau, and myself, strongly urges a DO NOT PASS on HB 754.

Thank you for the opportunity to speak.

SIGNED: _____

EXHIBIT 48
DATE 3-10-89
HB 754

March 10, 1989

Rep. Hanger

RE: HB 754

From: Teton River Water Users Assn.

Jesse Malone, Jr

RR 2 Box 204

Choteau, MT 59422

Opponent

We object to the leasing or purchase of water or water rights. I can envision how this could disrupt the water distribution of a stream, to the extent that agricultural production in the basin would be limited. Much of Montana's economy depends on agriculture. Don't hamper the producers ability to maintain our agricultural economic base.

I suggest that paragraph 2b, of Section 3, be stricken from the bill.

EXHIBIT 49
DATE 3-10-89
HB 754

March 10, 1989

TO: House Natural Resources Committee

FROM: Kim Enkerud, Executive Secretary, Montana Association of
State Grazing Districts

SUBJECT; House Bill 754 - An act establishing a river restoration
program and river restoration account.

Mr. Chairman, Members of the Committee:

My name is Kim Enkerud. I am the executive Secretary of the Montana Association of State Grazing Districts. Our organization is also a member of the Montana Riparian Association and I am actively involved in the Montana Riparian Education Committee.

I would like to pass out a diagram explaining just where a riparian zone is in regard to land classification zones. With this in mind, I feel the definition of associated lands on page 2, line 8, 9 and 10 is inappropriate when talking about riparian. The Montana Riparian Association is in the process of identifying and classifying riparian areas in the state of Montana. I feel it is a bit inappropriate for this bill to attempt to designate areas, when many land agencies have not yet come to an agreement on just what a riparian area is. The diagram I have just passed out is what is, at best, a tentative agreement of a riparian area.

While it is true that improved riparian zones will enhance fish and wildlife habitat, there is no real merit that the leasing or purchase of water or water rights will do the same thing. ^{to improve the riparian zone} In fact, from viewing the diagram I have presented, you are not even talking about the riparian zone. It is the aquatic zone.

Management is what improves riparian zones. Management that is achieved through cooperation of many landowners, agencies and organizations.

There are many projects in Montana and the surrounding states where riparian zones were improved through a lot of hard work and effort, NOT through the lease or purchase of water or water rights.

EXHIBIT 49
DATE 3-10-89
HB 754

An example is a project in Oregon where the federal agencies, grazing permittees, the Isaak Walton League and Oregon Cattlemen's Organization linked together to improve the riparian zone, improved the fishing and helped the rancher. This was done NOT by leasing or purchasing water or water rights, but by working cooperatively together.

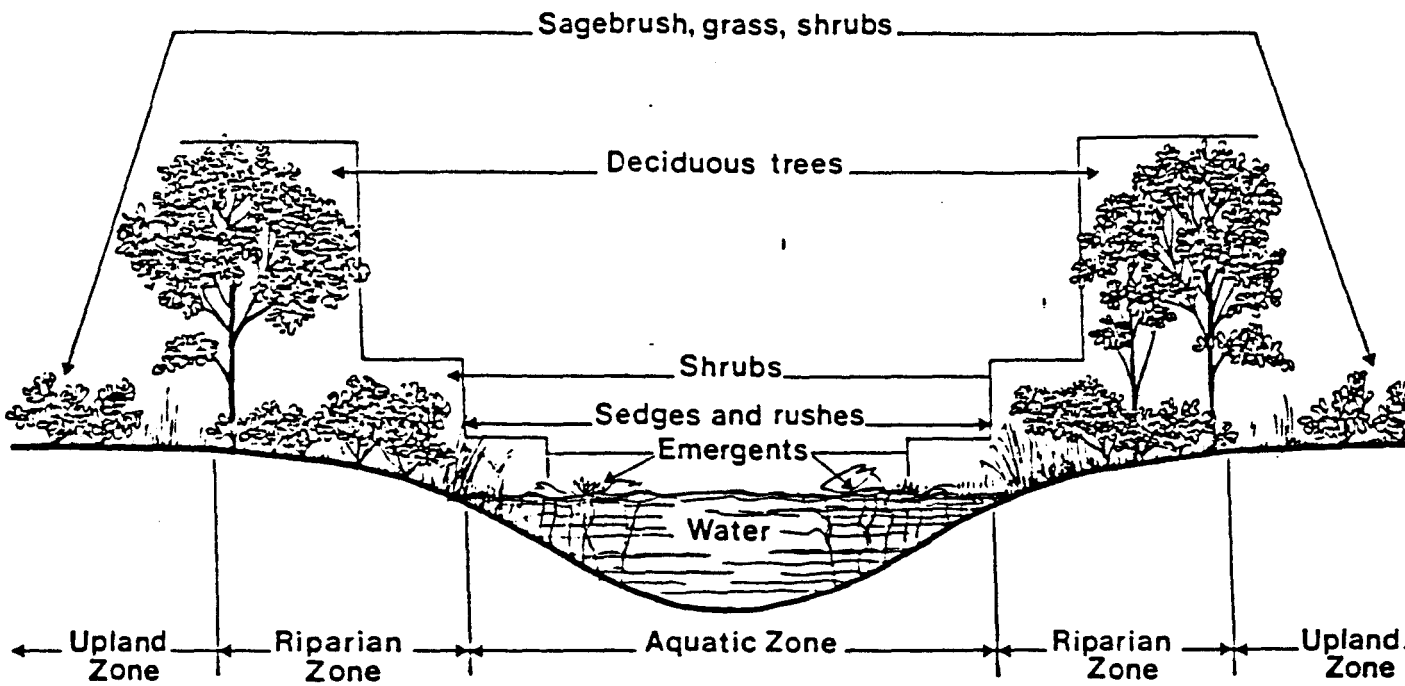
Here in Montana, the riparian education committee is trying to do the same thing. Starting last year, I, along with several private organizations, the Soil Conservation Service, Bureau of Land Management, Forest Service, American Fisheries Society, ^{DNRC} and the Department of Fish, Wildlife and Parks have developed a traveling display board on riparian improvement. We are presently working on a brochure, landowner workshop and a video showing the successes of riparian improvement through improved management NOT leasing or purchasing water rights. This is mainly volunteer work and each participant provides some in kind service to keep costs down. We do have some funding from the EPA for the brochures and landowner workshop speakers.

The money raised from this bill should be devoted toward grants that any individual trying to improve his riparian area should be able to apply. This money should not go to the Department of Fish, Wildlife and Parks to purchase or lease water or water rights.

We oppose House Bill 754.
Thank you.

KE:ejr

50
DATE 3-10-89
HB 754





P. O. Box 1679
Helena, Montana 59624
(406) 442-3420

EXHIBIT 51
DATE 3-10-89
HB 754

March 10, 1989

For the record, I am Carol Mosher, representing the Montana CattleWomen *and the Montana Stockgrowers*. *Sec. I Should not be part of the Statutes. It sounds like statement of intent*
We are opposed to HB 754 as the language in it presupposes that there is the power to lease or purchase water rights.

On page 2, line 8, it speaks of "associated" lands and that gives an entirely too wide of an implication.

In the bill when it talks of riparian vegetation associated with a river, it could well be interpreted to mean an adjoining hay field that is flood irrigated or sub irrigated. The amount of "taking" of private land in this bill and the giving of it to the Fish, Wildlife and Parks to administer and control is of considerable concern.

What amount of money will this bill generate? It seems like every session there is a small group wanting to raise recreational fees to fund their pet project with the Fish, Wildlife and Parks administering that particular program.

The title of this bill says restoration program that will affect rivers, streams, creeks, or other bodies of flowing waters. That could even be defined as extending down irrigation ditches if carried out to the letter of the law.

What is meant by "restoration"? In the dictionary it is defined as "bringing it back to a former, original, normal, or unimpaired condition." It would be interesting to know how that could be accomplished state-wide. *ARE you going to eliminate OR consider houses, fences and other things along waterways?*
We ask your consideration for a NO vote on this ambiguous type of legislation.

Thank you.

Carol Mosher

____HB754____HARPER____MARCH 10, 1989____

____MONTANA WATER RESOURCES ASSOCIATION, JO BRUNNER, EXEC. SEC.____

____HOUSE NATURAL RESOURCES____SUPPORT____AMEND____OPPOSE____X____

Mr. Chairman, members of the committee for the record, my name is Jo Brunner, and I am the Executive Secretary of the Montana Water Resources Association.

Mr. Chairman, the Montana Water Resources Association wishes to go on record as being opposed to HB754, an act establishing a river restoration program and account, etcetera.

The name of our Association is self explanatory. Our concerns lie in any area of water within the State of Montana. We certainly do recognize there are problems in many rivers and streams within the border of the state, and that we must continue to work to care for them.

It is our opinion that most of the programs this bill proposes to bring about can already be accomplished within our present programs, for instance our Conservation District programs, and that the department, should they have the desire, may already cooperate with other entities in programs beneficial to their interests.

Present law, of course, does not provide the formation of a separate and distinct program allowing the Fish Wildlife and Parks to rehabilitate the beds of our streams, the banks and shorelines, the wetlands and riparian vegetation anywhere within an undesignated area, in any manner they deem beneficial, on any river, stream, creek, or other flowing body of water. That seems quite ambitious, considering that they may not at this time have access to some of that water, or property.

We are especially concerned with the lack of definition for (a) on line 23, page 2---physical rehabilitation of rivers and their associated lands--- and we would like to know just what it entails.

Our association was involved from the very earliest efforts on the State Water Plan. Our immediate past president sits on the Water Plan Council. Several members of our board and association participated in the various Technical Advisory Committees. I sat on the instream flow and the Ag efficiency TAC, and the informal leasing discussion committee.

When I read this bill, it was the first time I had heard mention of raising the money to provide for the leasing of water through any other means than gifts to the Department. We have to recognize that occasionally our exuberance may run amuck, but I also have to wonder just what happened to the enthusiasm, by supporters of this bill, that projected the large contributions for the purpose of leasing water.

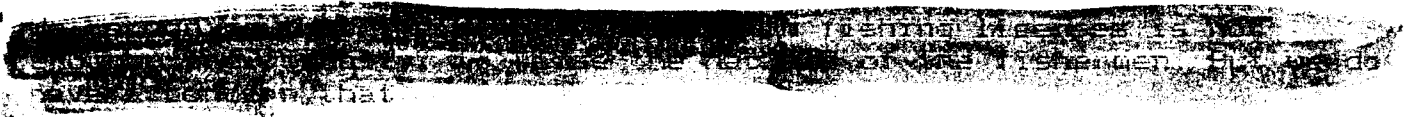
EXHIBIT 52
DATE 3-10-89
HB 754

not have a leasing bill passed as yet, and this bill asks fishermen to finance the purchase of water.

Mr. Chairman, members of the committee, this is not a bill that would be beneficial to our members, or other land owners, even our many fishing members. It is geared toward the time renowned 'flag, motherhood and apple pie', it brings in the Centennial theme, it intimates that the legislature has identified and they are just plain anxious to rectify all the harm being done to even our smallest waterways. Apparently only through this bill will we be able to hold up our heads once more in the world of river, and creek and stream use.

Because we believe that methods necessary are available to accomplish rehabilitation of stream banks, we have to wonder about the exact purpose for the introduction of this bill. If you tie the description of the "associated lands" in with the description of 'river' it appears that the sponsors of this bill would like control of the beds, banks, shorelines, wetlands and riparian vegetation of every river, stream, creek or other body of flowing water in the state of Montana. We have to assume control is the word necessary here, because the bill is lacking in definitions of how this rehabilitation will be accomplished; who will make the decisions as to what work will be done, by whom, where and when.

Please do not pass this bill.



53
DATE 3-10-89
HB 754

WITNESS STATEMENT

NAME Peggy Haglund BILL NO. ^{HB} 754

ADDRESS 1 South Montana, Helena, MT.

WHOM DO YOU REPRESENT? Montana Association of Conservation Districts

SUPPORT _____ OPPOSE ✓ AMEND ✓

COMMENTS: As HB 754 is presently written
the MACTD will have to rise in opposition.
If the bill is amended, we would be
willing to consider supporting it.

There are already many projects of this
type being done in Montana at this time
& it is too bad the people who drew
up this bill didn't branch out to get
input from other people & agencies.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

DATE

3-10-89

COMMITTEE ON

Natural Resources

SB 390, HB 754, SB 201

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
William Fitch	Power & Myself	SB 390		X
Jo Ann HUST	POWER & SELF	SB 390		X
Lola KORENKO	Power & My Self	SB 390		X
Dawn Cole	Power, My family & myself	SB 390		X
Gloria Stevens	POWER member & self	SB 390		X
Sylvia Corey	Power & myself	SB 390		X
DONALD COREY	POWER & MY SELF	SB 390		X
Arnold YLLredahl	Power & Myself	SB 390		X
KELLY STEPHENSON	Power & myself	SB 390		X
Hella CARLSON	Power & myself	SB 390		X
Gaye Egeberg	Power & FAMILY	SB 390		X
Dona Adams	Power & family	SB 390		X
Jesse Malone Jr	Teton Water Users Assn	HB 754		*
JAMES C. Nelson	CHRM - BOARD of OIL & GAS	SB 201	X	
Elizabeth RATHBUN	POWER member & Self	SB 390		X
Lowell RATHBUN	POWER member & Self	SB 390		X
Arline Stephenson	Power - rancher	SB 390		X
Bill Dale Brown	Power - rancher	SB 390		X
Donner	Maria	HB 754 SB 201	X	X
Carol Mesher	Mt. Stockgrowers & Cattle Ranch	HB 754		X
Vernil Jones	POWER - Self	SB 390		X
Raymond Ratto	POWER & Self	SB 390		X
Edw Ferguson	Power	SB 390		

(Please leave prepared statement with Secretary)

Natural Resources COMMITTEE

DATE March 10, 1989

[illegible]

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

Natural Resources COMMITTEEBILL NO. SB 201DATE March 10, 1989SPONSOR Keating

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
John P. Moore	41st 10th Ave S.E.	X	X
JOHN P. MOORE	41st 10th Ave S.E. Cut Bank, MT	X	
DOUG ABEKIN	751 2057 MADISE Cut Bank, MT	X	
Patrick M. Montalban	P.O. Box 350 Cut Bank, MT	X	
MARY ANN KELLY	BRIDGES WARRIOR BOYEMAN 14757 KELLY CYN RD. MT		X
JAMES C. NELSON	CHRM - BOARD of OIL & GAS	X	
KEVIN HART	Helena Project Man		
Fugate Park			
STEVE PALMBUSH	338 4th AVE S.E. Cut Bank, MT	X	
DAN MITCHELL	410 - 7th AVE SE Cut Bank 59427	X	
Joe Keating	P.O. Box 21479 - B.Y. 59109	X	
Stan Bradshaw	Timber Unlimited		✓
Dave Darby	Oil & Gas Drilling Advisory Council	X	
Jim Jensen	MERC		X
Janet Ellis	Audubon		X
Brant Quick	Northern Plains Resources Council		X
Kim Wiles	Stone Club		X
Janette Fallon	Helena	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

Natural Resources

COMMITTEE

BILL NO. HB 757DATE March 10, 1989SPONSOR Giacometto

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Larry Johnson ^{Montana Grain Growers Ass.}	Kremlin, MT	-	
Valerie Larson	Farm Bureau Chetani	X	
Stan Bradshaw	Trust Unlimited		✓
Nancy Matheson	AERO - Helena		✓
Marvin Barber	A & P A.	X	
RON DE VORDE	MT. FARMERS UNION	✓	
Peggy Hauglund	MT Assoc. of Cons. Dist	✓	
Jim Jensen	MEIC		X
Vanet Ellis	Audubon	neutral	✓
Brant Quick	NPRC ^{Box 858} Helena	neutral	
Everett Smartland	Mt. Dept. of Agric.	X	
Kim Wilson	Sierra Club		+
LeRoy Rust	MSU EXT Bozeman	✓	
Joy Silginer	Audubon		X
VERNON L. WESTFAKE			
Pam Langley	Montana Ag Business Assn	✓	
Randy Johnson	Montana Grain Growers Ass.	✓	
STEVE PILCHER	MT. Dept. of Health & Env. Sci.	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

Natural Resources COMMITTEEBILL NO. HB 754DATE March 10, 1989SPONSOR Harper

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Valerie Larson	Farm Bureau Choteau		X
Jesse Malone Jr	Teton River Water Users Assn		*
Eugene Montez	Montwater 509 Water Users Box 15 Hall, MT		X
Stan Bradshaw	Proctor 2147 Proctor	✓	
Stan Bradshaw	Fruit Unlimited	✓	
Don Chance	MONTANA WILDLIFE FED.	✓	
Marvin Barber	A.P.A.		X
Rose DE GOND	MT. FARMERS UNION		✓
Peggy Hauglund	MT Assoc. of Cons. Dist		amended X
Jim Jensen	MEIC	X	
John Salmon	WETA		X
Kim Enkerud	MT Assn. State Grazing Dist.		✓
Janet Ellis	Audubon	X	
Heehnd	Tramond		✓
Ann Will	Sier Club	X	
PETE TEST	HELENA	X	
GEORGE OCHENSKI	A.M.W.	X	
VERNON L. WESTLAKE	A.P.A + REP. H.D. 76		✓

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

ROLL CALL VOTE

HOUSE NATURAL RESOURCES

COMMITTEE

DATE 3-10-89 BILL NO. SB 201 NUMBER 1

NAME	AYE	NAY
Rep. Hal Harper	✓	
Rep. Tom Hannah		✓
Rep. Mike Kadas	✓	
Rep. Mary McDonough	✓	
Rep. Lum Owens	✓	
Rep. Vivian Brooke	✓	
Rep. Robert Clark		✓
Rep. Mark O'Keefe	✓	
Rep. Leo Giacometto		✓
Rep. Bob Gilbert		✓
Rep. Kelly Addy	✓	
Rep. Clyde Smith	✓	
Rep. Janet Moore	✓	
Rep. Rande Roth		✓
Rep. Ben Cohen, Vice-Chairman	✓	
Rep. Bob Ranev, Chairman	✓	

TALLY

11

5

Claudia Montagne
Secretary

Bob Ranev
Chairman

MOTION: to amend the adoption deadline
to December 31, 1989

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Chairperson Bob Raney, on March 17, 1989, at 4:30 p.m.

ROLL CALL

Members Present: All members present except:

Members Excused: Rep. O'Keefe

Members Absent: None

Staff Present: Claudia Montagne, Secretary; Hugh Zackheim, Staff Researcher, Environmental Quality Council

Announcements/Discussion: REP. RANEY announced that REP. BARDANOUVE, Chair of House Appropriations Committee, had asked the Natural Resources Committee to consider HB 760, and send him a message regarding the committee's recommendation on the bill.

REP. HANNAH, House District 86, and sponsor of HB 760, said the bill was concerned with the funding of a feasibility study for an off-stream storage site in the vicinity of Billings, namely Valley Creek. He said he was not convinced that Valley Creek was the very best project out there. However, he said, the resolution was important for several reasons. First, it made a statement that part of any comprehensive plan needed to include a major off-stream storage facility in the Billings vicinity. Second, it made a significant statement with respect to Pick-Sloane money, federal monies for water development. Third, in order to receive those monies, the state needed to put forth a good faith effort so that the Congressional Delegation could move forward on the federal level. He mentioned that Sen. Burns was on the Water/Energy Committee, and that such a resolution would be helpful to him in getting federal funding for water projects in the state of Montana.

REP. RANEY asked about the budget constraints, and the request in the bill for \$100,000. REP. HANNAH replied that if Appropriations could put \$3,000,000 in libraries, they could consider \$100,000 for a long-term development commitment. If the project did not take place, the money would revert.

REP. HANNAH suggested sending a recommendation that this was a worthy project, and that the state needed to encourage Congress to come forward with Pick-Sloane money.

REP. HARPER asked where the money would come from, and REP. HANNAH said \$90,000 would come from the general fund, and \$10,000 from the Renewable Resource Development Account.

REP. ROTH spoke in favor of the resolution. He said it would benefit industry, municipalities, recreationists, and agriculture.

REP. RANEY asked who would spend the money. REP. HANNAH said the money would be matched by the Bureau of Reclamation. He said there was a 1:5 match, and that the study would cost \$4,000,000 to \$5,000,000. At each step along the way, the project could be stopped if a fatal flaw were discovered.

REP. HARPER said the general fund would be stripped out of this bill by the Appropriations Committee, and asked if the bill would be worth anything with \$10,000. REP. HANNAH said yes. REP. HARPER added that because of the way in which the Renewable Resource Development projects were ranked, they might as well lobby members of the Long Range Planning Committee on the ranking order of the projects to ensure that this project got funded for \$10,000.

REP. GIACOMETTO disagreed with amending out the \$90,000 just because the committee thought Appropriations would take it out anyway. He said the Appropriations committee was the appropriate body to make that decision. He suggested the committee give a do pass recommendation to the bill.

Motion: REP. HARPER said he saw value in the bill, and moved a recommendation to the Appropriations Committee that the Natural Resources Committee found value in the bill, felt it was an important concept, and believed that if the bill could not be accepted with the full general fund amount, they believed the bill should be passed with the minimum, or \$10,000, in the Renewable Resource Development grant. REP. HANNAH seconded, and asked if the recommendation could read "with the \$10,000 RRD money plus whatever general fund money could be added". The committee agreed to this version of the motion.

Vote: The motion CARRIED, with Rep. Gilbert voting no.

DISPOSITION OF HB 143

Hearing 1/20/89

Motion: REP. GIACOMETTO moved HB 143 DO PASS.

Discussion: MR. ZACKHEIM passed out the REP. ADDY's amendments, EXHIBIT 1.

Amendments, Discussion, and Votes: REP. ADDY moved the amendments. He asked the committee to recall the

conversation on the bill at the previous executive action. He said if a corporation were required to be called a responsible person, people could set up a corporation and avoid financial responsibility by walking away from the corporation. With these amendments, the committee would assure that a natural persons' or corporations' word would literally be their bond.

REP. RANEY asked for clarification of the language. REP. ADDY said that a natural person would be someone who had a substantial portion of the stock in the corporation that is doing the drilling.

REP. HANNAH asked what the committee was trying to avoid happening. REP. ADDY said if a person owned a corporation, and the corporation incurred a debt, and the person did not want to pay it, the person would take all the assets out of the corporation and walk away from it. REP. HANNAH asked if this pierced the corporate veil, and REP. ADDY said yes it did. He said this would require a personal guarantee from the primary owners of the corporation if the corporation did not have \$250,000 in assets.

REP. GIACOMETTO said the same legal mess he was referring to was put there for a protection. He said this was not done anywhere else. He questioned putting this precedent in place, and supported the legal mess that was in place. REP. ADDY said that when a problem arose with one of these wells, it was an expensive, large problem. He said he wanted to make sure an individual or owner was sincere in giving a bond. He said the state did not want to tempt that individual to circumvent the law by some financial shenanigans and a walk-away.

REP. HANNAH asked if the state had a problem with people walking away from problems with wells. REP. ADDY said the problem was that they could not get bonds.

JEROME ANDERSON, Shell Oil, spoke on Rep. Addy's amendments. He said this provision defined what a responsible person was. If this were to go through, it would exempt corporations with assets of less than \$250,000 from that section of the bill that provided for the methodology to go after the responsible person. He said there were people in the drilling business with shallow wells, who did not have that amount of assets. There were also instances where there was not a single natural person with a primary ownership. He said he feared the amendments were confusing, and would exempt some people from being responsible parties.

REP. HARPER asked about the situation where there was no single natural person, and how this would affect the responsible party in that corporation. Mr. Anderson said all the owners would be held responsible.

- REP. BROOKE asked if the subcommittee had put in a "bleed 'em dry" clause, and Mr. Anderson said yes, which was intended to enable the Oil and Gas Commission to get all of the assets that any individual or corporation had.
- REP. HARPER asked if there was any way to give the board the authority to screen that, and if a bond could be required of those people. MR. ANDERSON said that under the bill, the whole thing started out with a drilling bond. The purpose of the bill was to provide a vehicle for drilling bonds to have some termination date. Under the bill, if a well was a dry hole and had to be plugged and abandoned, then the party that did the drilling would plug and abandon it. This party would then have the Oil and Gas Commission come in and check it and approve it, whereupon the drilling bond would be released. If the well were to become a commercial well, then it would be certified as such, the drilling bond would be released and production would begin. Mr. Anderson said the ultimate goal of the bill was to deal with problems with wells, once commercial, but abandoned down the line. The responsible party would be subject to action on the part of the Oil and Gas Commission to get the well cleaned up and pay those costs. He said he did not see much of this occurrence going on, and said everyone was thinking of situations in the state where drilling activities were conducted long before there were any regulations such as there are today.
- REP. ADDY again explained his amendment. He acknowledged that there was less of a likelihood of the situation up in the north country happening today, but that when someone undertakes such an activity as drilling, there still was a possibility. Without \$250,000 worth of assets, a bank would ask for a personal guarantee before extending a \$250,000 line of credit. In this situation the state of Montana was the bank, and the amendment allowed the state to get that personal guarantee.
- REP. RANEY asked if there was anyone out there drilling who was in this category; i.e., without \$250,000 worth of assets. Mr. Anderson said there were some people on an individual basis within a group who might have less than \$250,000 worth of assets. He added that the cost of cleaning up abandoned wells had fallen within the purview of the \$10,000 drilling bond. Ms Rickman, Oil and Gas Commission, said most of the high costs had been incurred on the clean-up of the old wells. Mr. Anderson said that with or without the amendment, the situation would be much better than it was at the present time if the bill were passed.

The motion on the amendments CARRIED on a roll call vote, 8-7.

Amendments, Discussion, and Vote: REP. GIACOMETTO moved the O'Keefe amendments (EXHIBIT 2). The motion CARRIED unanimously.

Recommendation and Vote: REP. GIACOMETTO moved the bill DO PASS AS AMENDED. The motion CARRIED unanimously.

DISPOSITION OF HB 676

Hearing 2/17/89

Motion: REP. ADDY moved the bill DO PASS.

Discussion: None

Amendments, Discussion, and Votes: Hugh Zackheim distributed the gray bill dated March 16, 1989 (EXHIBIT 3). He went through the bill, and said the amendments had been incorporated from the previous executive action. He said there was a definition for "contaminated" to answer the concern about the definition of infectious waste. He said a definition of "sharps" had been added. In answer to Rep. Giacometto's concern that there was no logical reason to separate non-institutional facilities from institutional facilities, the language was changed to say any person who generated less than 50 lbs per month could transport and store infectious waste according to OSHA requirements, but would have to comply with this act on treatment and disposal.

REP. GIACOMETTO asked where the 50 lb figure came from. MR. ZACKHEIM said in the federal Medical Waste Tracking Act, there was an exclusion for people who generated 50 lb of infectious waste or less a month. An example would be a dentist, or particularly small nursing homes or hospitals.

JIM AHRENS, of the Montana Hospital Association, said his organization preferred to see the exemption higher if possible.

REP. ROTH asked if a period of time for compliance would help, and Mr. Ahrens said yes. REP. RANEY commented that 18 months for compliance had already been provided.

REP. GIACOMETTO asked if the sponsor could give on the 50 lbs, and REP. RANEY said yes. Rep. Raney suggested 100 lbs, and asked the researcher how that would affect the bill. MR. ZACKHEIM said it would have implications for the fees and the fiscal note. It would also impact the language regarding being below the limit, and whether, in those cases, an individual or institution would have to comply with any state storage and transport regulations different from OSHA.

REP. HANNAH asked if there was a federal regulation on this subject, and what was their figure for pounds generated. MR. ZACKHEIM said there were federal guidelines. Mr.

Leiter said there were not any limits yet, but that said EPA was beginning to set these. He said the amount was 50 lbs.

REP. RANEY suggested that they make it 100 lbs until July 1, 1991, at which time it would come down to 50 lbs. Mr. Ahrens said the additional lead time and the higher limit would help the smaller hospitals in the state, 15 of which do not have incinerators. Rep. Raney said the other pound figures in the bill would have to be doubled to be consistent if this change were made. He said this would give the next legislature the opportunity to address the issue.

REP. HARPER registered a concern about the exemption given to mortuaries. REP. RANEY said that was his amendment, and that he had checked into the generation of infectious waste from morgues. He assured Rep. Harper that no infectious wastes were generated there.

REP. RANEY suggested leaving the changes in lbs and fees, without any increases or decreases set for 1991. The committee agreed.

REP. ROTH commented on the disparity between the two fee levels (\$2,000 and \$5,000 annually). He suggested an incremental increase in the fees as the poundage increased. REP. RANEY replied that a person operating at those levels would be in the business, and such an increase would not be substantial. He said there was no commercial infectious waste operation in the state at this time.

REP. ADDY made a motion to adopt the amendments as set forth in the gray bill with the day's amendments added. The motion CARRIED.

Recommendation and Vote: REP. ADDY moved the bill DO PASS AS AMENDED, and the motion carried with Rep. Giacometto, Rep. Gilbert, and Rep. Owens voting no.

DISPOSITION OF HB 752

Hearing 3/8/89

Motion: REP. HARPER made a motion that HB 752 DO PASS.

Discussion: None

Amendments, Discussion, and Votes: MR. ZACKHEIM distributed conceptual amendments suggested by Rep. Raney. REP. RANEY commented that there would be no fees for disposing of garbage within the region. He also called attention to the waiver of fees for intra-regional garbage disposal already in operation. He said that the major change was amendment 5. This closed the loophole in current state law which

would allow an out-of-state corporation to purchase or lease land in Montana and dispose of solid waste on that land without licensing or fees. Rep. Raney said it also provided for civil penalties (\$1,000 per day).

MR. ZACKHEIM went through the amendments. Rep. Raney said that with these amendments, the legislature would have something to start with, and would receive feed back from people affected by the law. The amendments also clarified that any current inter-regional transport (including from Yellowstone Park) would be eligible for a waiver.

REP. GIACOMETTO asked if this bill would prohibit waste from coming into the state, and if it would prohibit dumping. Rep. Raney said no. He said the loop hole closed was that a person or corporation would have to be licensed so that the state would know what they were dumping.

REP. HARPER moved the conceptual amendments, including the codification amendment, and the grandfathering of interstate disposal operations currently in practice. The motion CARRIED unanimously.

Recommendation and Vote: REP. ROTH moved DO PASS AS AMENDED. The motion CARRIED, with Rep. Gilbert and Rep. Giacometto voting no.

DISPOSITION OF HB 757

Hearing 3/10/89

Motion: REP. GIACOMETTO moved the bill DO PASS.

Discussion: None

Amendments, Discussion, and Votes: REP. GIACOMETTO moved the amendments.

REP. COHEN said the subcommittee had worked long and hard the past two days, and had arrived at general agreement with all the interested parties including agricultural organization. They had said that although it would be tough on them, they thought it was necessary and that they could go with it. He went through the amendments to the bill that provided some protection for groundwater in agricultural areas of the state.

REP. COHEN said there were no substantive changes in the bill. Instead, what they proposed were clean-up measures. Rep. Giacometto said the Board of Health and Environmental Sciences (DHES) would be responsible for the development of standards, but that they would start from the EPA standards. The Department of Agriculture (DOA) would be responsible for the development of agricultural chemical groundwater management plans, which would allow for prevention as well as enforcement. The bill also set up an educational program

and overall plan for the state to ensure the use of best management practices (BMP's) to protect the groundwater.

There was a discussion regarding the zone of contamination and the point of detection. GARY GINGERY said this was a difficult point to deal with. He said that when a person got a "detect", he/she could not always determine the original source of the problem. The thinking of the subcommittee was that if the point of detection was taken, additional monitoring in a larger area would trigger a management plan. He said he had difficulty defining zone, as in zone of contamination. Rep. Cohen said that once a chemical had been detected, the department was supposed to move forward with additional monitoring to find out the extent of contamination. He said to keep in mind that part of the purpose of the bill was to provide compliance with the Clean Water Act's Nonpoint Source Pollution requirements.

MR. ZACKHEIM said the "point of detection" was a knowable item, whereas "zone" was not. He suggested language stating "when an agricultural chemical had been determined to have migrated in the groundwater from the point of original detection".

REP. COHEN continued through the bill, with specific sections needing language and grammar clarification. In the section dealing with commercial fertilizer contamination, they added the word "residue" to indicate that the bill applied to component parts or compounds of fertilizers. Another section provided protection to the buyer of agricultural land by requiring the seller to provide written notice about any obligations under the plan. The department was to be sent a copy of the notification, for the purpose of contacting the appropriate party with any changes in the management plan.

REP. COHEN said the document represented the unanimous recommendations of the subcommittee for amendments to the bill.

REP. GIACOMETTO's motion on the amendments CARRIED.

Recommendation and Vote: REP. GIACOMETTO moved the bill DO PASS AS AMENDED. The motion CARRIED unanimously.

DISPOSITION OF HB 552

Hearing 2/13/89

Motion: REP. RANEY moved the bill DO PASS.

Discussion: None

HOUSE COMMITTEE ON NATURAL RESOURCES

March 17, 1989

Page 9 of 9

Amendments, Discussion, and Votes: REP. RANEY moved the Harper amendments. Rep. Harper said the amendments coordinated the bill and made it work together with the appropriation. The motion CARRIED unanimously.

Recommendation and Vote: REP. RANEY moved DO PASS AS AMENDED. The motion CARRIED unanimously.

SB 223

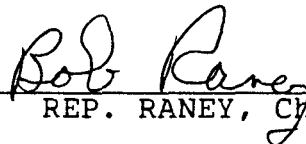
REP. HANNAH asked to distribute some suggested amendments (EXHIBIT 5) to the committee on SB 223. He said he had been working with Van Jamison of DNRC. Mr. Jamison had said there was one issue they had talked about with industry as a potential problem was the timing of the need decision and the environmental decision. He said currently they must be made at the same time, so that industry was faced with the situation of being turned down on basis of need, after spending sums of money and time on the environmental analysis unnecessarily. The trade off of doing the need decision separate from the environmental decision would be the decision of industry to extend the time frame of the project.

REP. HANNAH said that the industrial and environmental communities continue to operate at loggerheads, rather than trying to deal with minor problems or adjustments necessary to make the laws in place work. He saw this amendment as an example of addressing the actual problems and a start towards drawing those two parties together.

REP. HANNAH asked the committee to consider these amendments and to come back at a later date for action on the amendments and the bill.

ADJOURNMENT

Adjournment At: 6:45 p.m.



REP. RANEY, Chairperson

BR/cm

6212.min

DAILY ROLL CALL

HOUSE NATURAL RESOURCES COMMITTEE

50th LEGISLATIVE SESSION -- 1989

Date 3-17-89

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Raney, Chairman	✓		
Rep. Ben Cohen, Vice-Chairman	✓		
Rep. Kelly Addy	✓		
Rep. Vivian Brooke	✓		
Rep. Hal Harper	✓		
Rep. Mike Kadas	✓		
Rep. Mary McDonough	✓		
Rep. Janet Moore	✓		
Rep. Mark O'Keefe			✓
Rep. Robert Clark	✓		
Rep. Leo Giacometto	✓		
Rep. Bob Gilbert	✓		
Rep. Tom Hannah	✓		
Rep. Lum Owens	✓		
Rep. Rande Roth	✓		
Rep. Clyde Smith	✓		

STANDING COMMITTEE REPORT

March 18, 1989

Page 1 of 67

Mr. Speaker: We, the committee on Natural Resources report that House Bill 143 (first reading copy -- white) do pass as amended .

Signed: Bob Raney
Bob Raney, Chairman

And, that such amendments read:

1. Title, line 10.
Following: "82-10-402,"
Insert: "82-11-101,"

2. Page 1.
Following: line 11
Insert: " STATEMENT OF INTENT

It is the intent of the legislature to create an oil and gas production damage mitigation account to be administered by the board of oil and gas conservation for the purpose of properly plugging and abandoning oil and gas wells when a responsible person cannot be found or when the responsible person does not have sufficient financial resources. The board shall adopt rules to help it define "sufficient financial resources", shall require a responsible person to pay the costs of plugging and abandoning to the extent of his available resources, and shall pursue full cost recovery for funds spent from the account through the procedures provided in [section 9] or other lawful means. The board may adopt rules to administer instituting a lien on the person's personal and real property to cover the cost of plugging and abandoning.

The legislature intends that the board use the account for reclamation related to land, water, or wildlife resources disturbed by abandoned oil and gas wells, injection wells, sumps, and seismographic shot holes.

It is also the intent to remove producing wells completed after June 30, 1989, from drilling bonds and to limit the liability of the bond or its equivalent to the period between issuance of the bond and either proper plugging and abandoning of a dry hole or completion of a producing well. The board shall adopt forms for the

producer to indicate that a well has been completed and shall, upon receipt of the information and payment required under [section 7], release and absolve the owner of the well from the bond required under 82-11-123.

It is further the intent of the legislature that the board of oil and gas conservation respond promptly to emergency situations that may arise."

3. Page 2, line 8.

Following: "(ii)"

Insert: "beginning in fiscal year 1992,"

Strike: "\$250,000"

Insert: "\$50,000"

4. Page 5, line 21.

Strike: "which"

Insert: "that"

5. Page 5, line 24.

Strike: "list shall"

Insert: "record must"

6. Page 6, line 3.

Strike: "the preceding"

Following: "subsection"

Insert: "(1)"

7. Page 6, line 4.

Following: "determine"

Insert: "and list"

8. Page 6, lines 12 and 13.

Strike: "under" on line 12 through "subsection" on line 13

Insert: "or when the person does not have sufficient financial resources to pay for complete reclamation"

9. Page 6, lines 17 and 18.

Strike: "established" on line 17 through "available" on line 18

Insert: "in a manner consistent with the requirements for the use of the account provided in [section 6] and [section 9]"

10. Page 9, line 8.

Strike: "as required "

Insert: "for the purposes of using the oil and gas production damage mitigation account established"

11. Page 11, line 7.

Following: "the"

Insert: "owner notifies the"

Strike: "is" through "[section 7]"

12. Page 11, line 9.

Strike: "is" through "provisions"

Insert: "meets the requirements"

13. Page 12, line 6.

Strike: "1989"

Insert: "1991"

14. Page 12, line 8.

Strike: "\$250,000"

Insert: "\$50,000"

15. Page 12, line 13.

Strike: "\$500,000"

Insert: "\$200,000"

16. Page 12, line 15.

Strike: "\$500,000"

Insert: "\$200,000"

17. Page 12, line 17.

Strike: "\$500,000"

Insert: "\$200,000"

Strike: "\$250,000"

Insert: "\$50,000"

18. Page 12.

Following: line 19

Insert: "(3) In addition to the allocation provided in subsection (2), there must be deposited in the oil and gas production damage mitigation account:

(a) all funds received by the board pursuant to 82-11-136; and

(b) all fees received by the board from owners of producing wells pursuant to [section 7]."

Renumber: subsequent subsections

19. Page 12, line 25 through line 1, page 13.

Following: "abandoned"

Strike: ", " on line 25 through "quantities," on line 1

20. Page 13, line 2.

Following: "located"

Insert: "or the responsible person does not have sufficient funds to pay the costs. The responsible person shall, however, pay costs to the extent of his available resources and is subsequently liable to fully reimburse the account or shall

be subject to a lien on property as provided in [section 9]
for costs expended from the account to properly plug the
well and to mitigate any damage caused by the well."

21. Page 13, line 11.

Strike: "application of"

Insert: "receipt of notification by"

22. Page 13, line 12.

Strike: "in"

Insert: "on"

Following: "board"

Insert: ", payment by the owner of \$125,"

Strike: "upon providing"

Following: "proof"

Insert: "from the owner"

23. Page 14, line 5.

Strike: "-- priority"

24. Page 14, lines 7 and 8.

Following: "account"

Strike: ", " on line 7 through "[section 6(3)]" on line 8

Insert: "under [section 6(4)]"

25. Page 14, line 9.

Following: "year"

Insert: ", "

26. Page 14, lines 11 and 12.

Following: "person," on line 11

Strike: "as" on line 11 through "[section 4]," on line 12

27. Page 14, lines 14 and 15.

Following: "person," on line 14

Strike: "as" on line 14 through "[section 4]," on line 15

Following: "not"

Insert: "fully"

28. Page 14, lines 19 through 21.

Strike: "has" on line 19 through "may" on line 21

Insert: "must"

Following: "to" on line 21

Strike: "the"

Insert: "all"

29. Page 14, line 22.

Following: "the"

Insert: "responsible"

Strike: "as determined under [section 4]"

30. Page 14, lines 23 through 25.

Strike: "has" on line 23 through "[section 4]" on line 25

Insert: "is valid until paid in full or otherwise discharged.

The lien must be foreclosed in accordance with applicable laws governing foreclosure of mortgages and liens."

31. Page 14.

Following: line 25

Insert: "Section 10. Section 82-11-101, MCA, is amended to read:

"82-11-101. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Administrator" means the administrator of the division of oil and gas conservation.

(2) "Board" means the board of oil and gas conservation provided for in 2-15-3303.

(3) "Class II injection well" means a well, as defined by the federal environmental protection agency or any successor agency, that injects fluids:

(a) that have been brought to the surface in connection with oil or natural gas production;

(b) for purposes of enhancing the ultimate recovery of oil or natural gas; or

(c) for purposes of storing liquid hydrocarbons.

(4) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(5) "Determinations" means those decisions delegated to the state by or under authority of the Natural Gas Policy Act of 1978 or any successor or similar legislation relating to oil and gas.

(6) "Enhanced recovery" means the increased recovery from a pool achieved by artificial means or by the application of energy extrinsic to the pool; such artificial means or application includes pressuring, cycling, pressure maintenance, or injection into the pool of any substance or form of energy as is contemplated in secondary recovery and tertiary programs but does not include the injection in a well of a substance or form of energy for the sole purpose of aiding in the lifting of fluids in the well or stimulating of the reservoir at or near the well by mechanical, chemical, thermal, or explosive means.

(7) "Field" means the general area underlaid by one or more pools.

(8) "Fluid" means any material or substance that flows or moves, whether in a semisolid, liquid, sludge, gas, or any other form or state.

(9) "Gas" means all natural gases and all other fluid hydrocarbons as produced at the wellhead and not defined as oil in subsection (10) of this section.

(10) "Oil" means crude petroleum oil and other hydrocarbons

regardless of gravity which are produced at the wellhead in liquid form by ordinary production methods and which are not the result of condensation of gas before or after it leaves the reservoir.

(11) "Owner" means the person who has the right to drill into and produce from a pool and to appropriate the oil or gas he produces therefrom either for himself or others or for himself and others, and the term includes all persons holding such authority by or through him.

(12) "Person" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind and includes any agency or instrumentality of the state or any governmental subdivision thereof.

(13) "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of any state waters that exceeds that permitted by state water quality standards or standards adopted by the board, including but not limited to the disposal, discharge, seepage, drainage, infiltration, flow, or injection of any liquid, gaseous, solid, or other substance into any state waters that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife. A disposal, discharge, seepage, drainage, infiltration, flow, or injection of fluid that is authorized under a rule, permit, or order of the board is not pollution under this chapter.

(14) "Pool" means an underground reservoir containing a common accumulation of oil or gas or both; each zone of a structure which is completely separated from any other zone in the same structure is a pool, as that term is used in this chapter.

(15) "Producer" means the owner of a well or wells capable of producing oil or gas or both.

(16) "Responsible person" means a person who is determined by the board under 82-10-204 to have abandoned an oil or gas well, injection well, sump, or seismographic shot hole and who is:

(a) a corporation, association, partnership, or other business organization with assets in excess of \$250,000; or

(b) if the business organization does not have assets in excess of \$250,000, a natural person with primary ownership in the business organization.

~~(16)~~ (17) "State waters" means any body of water, either surface or underground.

~~(17)~~ (18) "Waste" means:

(a) physical waste, as that term is generally understood in the oil and gas industry;

(b) the inefficient, excessive, or improper use of or the

unnecessary dissipation of reservoir energy;

(c) the location, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner which causes or tends to cause reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations or which causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas; and

(d) the inefficient storing of oil or gas. (The production of oil or gas from any pool or by any well to the full extent that the well or pool can be produced in accordance with methods designed to result in maximum ultimate recovery, as determined by the board, is not waste within the meaning of this definition.)"

Renumber: subsequent sections

STANDING COMMITTEE REPORT

March 23, 1989

Page 1 of 11

Mr. Speaker: We, the committee on Natural Resources report that HOUSE BILL 676 (first reading copy -- white), with statement of intent included, do pass as amended.

Signed: _____


Bob Raney, Chairman

And, that such amendments read:

1. Title, line 8.

Strike: "DISPOSAL"

Insert: "MANAGEMENT"

2. Title, line 11.

Strike: "DISPOSAL"

Insert: "MANAGEMENT"

3. Title, lines 14 and 15.

Strike: "THE"

Insert: "ADDITIONAL"

Strike: "TREATMENT, STORAGE, OR DISPOSAL"

Insert: "MANAGEMENT"

4. Title, line 18.

Following: "PROVIDING"

Insert: "APPLICABILITY DATES, A RETROACTIVE APPLICABILITY DATE
FOR THE INFECTIOUS WASTE MANAGEMENT FEE, AND"

5. Page 2.

Following: line 5

Insert: "As part of the regulations implementing the management standards provided in [section 5], the department shall consider the following specific requirements:

(1) Infectious waste, except for sharps, must be contained in disposable plastic bags or other appropriate containers that are impervious to moisture and have a strength sufficient to preclude ripping, tearing, or bursting under normal conditions of use. Bags must be securely tied to prevent leakage during storage, handling, or transport.

(2) Sharps subject to storage, transport, treatment, or disposal must be packaged in leakproof, rigid, puncture-resistant containers that are taped closed or tightly lidded to preclude loss of the contents.

(3) Locations where infectious waste is contained must be secured to deny access by unauthorized persons and must be marked with "biological hazard" or "biohazard" signs.

(4) Bags used for containment of infectious waste must be red or orange and clearly identified.

(5) Rigid containers of discarded sharps must be labeled as "biomedical waste" or placed in the bags used for other infectious waste."

6. Page 2.

Following: line 17

Insert: "The department shall adopt rules providing for a waiver of the per-pound interregional management fee for interregional management that results in an equivalent or reduced risk to Montana's public health, safety, welfare and environment when compared to the alternative of intraregional management. The fee waiver authorized by this rule is intended to ensure that any current and safe interregional management practices are not subject to undue expense. If a commercial facility does not manage any infectious waste for which the per-pound fee is assessed, the annual operating fee for that commercial facility must be determined pursuant to [section 8(1)(b)(iii)]."

7. Page 2, line 18.

Strike: "providing"

Insert: "implementing the provisions of [section 7] that provide"

8. Page 2, line 20.

Strike: "reduces the"

Insert: "results in an equivalent or reduced"

Following: "to"

Strike: "the"

Insert: "Montana's"

9. Page 2, line 21.

Following: "safety,"

Strike: "and"

Following: "welfare"

Strike: "and to the"

Insert: ", and"

10. Page 2, line 22.

Following: "The"

Insert: "fee"

11. Page 3, line 23.

Strike: "disposal"

Insert: "management"

12. Page 4, line 22.

Strike: "medical"

Insert: "health care"

Following: "accepts"

Insert: "infectious waste"

13. Page 4, lines 23 and 24.

Strike: "infectious" on line 23 through "region" on line 24

14. Page 4.

Following: line 24

Insert: "(4) "Commercial transporter" means a person who, in return for consideration, transports infectious waste to a management location.

(5) "Contaminated" means harboring a pathogen in a state that could transmit infection or disease.

(6) "Decontamination" or "to decontaminate" means a process of rendering noninfectious through steam sterilization, chemical treatment, or other sterilization procedures a container, implement, or other article contaminated by infectious waste."

Renumber: subsequent subsections

15. Page 5, lines 3 through 8.

Strike: "discharge" on line 3 through line 8 in its entirety

Insert: "final placement of infectious waste."

16. Page 5, line 10.

Strike: "sterile"

Insert: "noninfectious"

17. Page 5, line 18.

Strike: "isolation wastes;"

18. Page 5, line 22.

Strike: "contaminated sharp instruments and objects"

Insert: "sharps"

19. Page 5, line 23.

Following: "and"

Insert: "veterinary"

20. Page 5, line 24.

Strike: "a potential"

Insert: "suspected as a"

21. Page 5, line 24 through line 6, page 6.

Strike: "wastes" on page 5, line 24 through line 6, page 6 in its entirety

Insert: "wastes from humans or animals that are isolated to protect humans from communicable diseases; and wastes generated in connection with patient care that are known to be contaminated."

22. Page 6.

Following: line 11

Insert: "(13) "Management" or "to manage" means treatment, storage, or disposal, except that the term does not mean the disposal of infectious waste that has been rendered noninfectious.

(14) "Noninstitutional facility" means the office or clinic of a health care professional licensed under Title 37 that is not within a health care facility as defined in 50-5-101."

Renumber: subsequent subsections

23. Page 6, line 16.

Strike: "disposal"

Insert: "management"

24. Page 6, lines 18 through 20.

Strike: subsection (13) in its entirety

Insert: " (17) "Sharps" means any discarded health care article that may cause punctures or cuts, including but not limited to needles, intravenous tubing with needles attached, scalpel blades, glassware, and syringes that have been removed from their original sterile containers.

(18) "Steam sterilization" means a treatment method for infectious waste utilizing saturated steam within a pressure vessel (known as a steam sterilizer, autoclave, or retort) at time lengths and temperatures sufficient to kill infectious agents within the waste."

Renumber: subsequent subsections

25. Page 7, lines 5 through 7.

Strike: "so" on line 5 through "volume" on line 7

26. Page 7, line 14.

Strike: "Infectious"

Insert: "Except as provided in subsection (3), infectious"

27. Page 7, line 17.

Following: "segregation"

Insert: "by separate containment"
Following: "waste"
Insert: "containers"

28. Page 7, line 21.
Strike: "properly disinfected"
Insert: "decontaminated"

29. Page 8, line 6.
Following: "(B)"
Insert: "steam"

30. Page 8, line 7.
Strike: "or"

31. Page 8, line 8.
Following: "for"
Insert: "the noncommercial disposal of small quantities of"
Following: "waste"
Insert: "generated incidentally to a health care procedure"

32. Page 8, line 12.
Strike: "."
Insert: "; or (d) any other technique approved by department rule
that results in effectively treated infectious waste."

33. Page 8, line 20.
Strike: "disinfected"
Insert: "decontaminated"

34. Page 9, line 11.
Following: "parts"
Insert: "(other than teeth)"

35. Page 9.
Following: line 12
Insert: "(3) A person who generates less than 100 pounds of
infectious waste a month and that packages, labels, and
otherwise handles infectious waste in accordance with the
guidelines of the federal occupational safety and health
administration may store and transport infectious waste in
the same manner as noninfectious solid waste, but must
comply with treatment and disposal requirements and may not
subject infectious waste to compaction."
Renumber: subsequent subsection

36. Page 9, line 20.
Strike: "treats, stores, or disposes of"
Insert: "manages"

37. Page 9, line 21.

Strike: "a"

Insert: "an infectious waste management"

38. Page 10, lines 19 and 20.

Following: "an" on line 19

Insert: "initial permit"

Following: "application"

Strike: "for" on line 19 through "facility" on line 20

39. Page 11, lines 10 through 20.

Strike: "No" on line 10 through line 20 in its entirety

Insert: "A commercial transporter shall possess an infectious waste transport permit issued by the department."

40. Page 12, lines 18 through 20.

Strike: "or" on line 18 through "Montana" on line 20

41. Page 12, line 21.

Strike: "may"

Insert: "shall"

42. Page 12, line 23.

Strike: "reduces the"

Insert: "results in an equivalent or reduced"

Following: "to"

Strike: "the"

Insert: "Montana's"

Following: "safety,"

Strike: "and"

43. Page 12, line 24.

Following: "welfare"

Insert: ", "

Following: "and"

Strike: "to the"

44. Page 13, line 3.

Strike: "disposal"

Insert: "management"

45. Page 13, line 4.

Strike: "disposes of"

Insert: "manages"

46. Page 13, line 6.

Strike: "disposal"

Insert: "management"

47. Page 13, lines 11, 13, 16, 21, 23, and 25.

Strike: "disposes of"

Insert: "manages"

48. Page 13, lines 13 and 16.

Strike: "1,000"

Insert: "1,200"

49. Page 13, line 18.

Strike: "For"

Insert: "Except as provided for in subsection (c), for"

50. Page 13, line 19.

Strike: "disposes only of"

Insert: "manages only"

51. Page 14, line 1.

Strike: "10 cents"

Insert: "25 cents"

52. Page 14, line 2.

Strike: "disposed of"

Insert: "generated in a different region and managed at the facility, except as provided in subsection (1) (b) (iii)"

53. Page 14.

Following: line 2

Insert: "(iii) (A) The department shall waive the per-pound fee for specific sources of infectious waste transported across regional boundaries to a commercial management facility if the transport and management of that waste results in an equivalent or reduced risk to Montana's public health, safety, welfare, and environment when compared to the alternative of intraregional disposal.

(B) If a commercial facility manages only infectious waste for which a per-pound fee is not assessed, the annual fee for that commercial facility is \$2,000 if the facility manages less than 50,000 pounds of infectious waste and \$5,000 if the facility manages 50,000 pounds or more of infectious waste.

(c) For a commercial facility that manages a quantity of infectious waste no greater than the quantity managed at that facility during 1988, the annual fee is \$2,000.

(2) The infectious waste management fee must be paid no later than March 31 of the year following the calendar year for which the fee is assessed."

Renumber: subsequent subsection

54. Page 14, line 9.

Strike: "disposal"

Insert: "management"

55. Page 14, line 20.

Following: "[sections 1 through 19]"

Insert: "and [section 20]"

56. Page 14, line 24.

Strike: "generated, treated, stored, or disposed of"

Insert: "managed"

57. Page 15, line 15.

Strike: "1"

Insert: "31"

58. Page 15, line 22.

Strike: "disposed of"

Insert: "managed"

59. Page 15, line 24.

Strike: "disposal"

Insert: "management"

60. Page 16, line 1.

Strike: "disposed of at"

Insert: "transported for management to"

61. Page 16, line 3.

Strike: "disposal"

Insert: "management"

Following: "transport"

Strike: "for that disposal"

62. Page 16, line 13.

Strike: "handling"

Insert: "management"

63. Page 16, line 19.

Strike: "1,000"

Insert: "50"

Strike: "year"

Insert: "month"

64. Page 16, line 24.

Strike: "handles 1,000"

Insert: "manages 50"

65. Page 16, line 25.

Strike: "year"
Insert: "month"

66. Page 17, line 2.
Strike: "1,000"
Insert: "50"
Following: "waste"
Insert: "in any month"

67. Page 17.
Following: line 2
Insert: "(c) The appointment of the same individual as
infectious waste manager by two or more noninstitutional
facilities in the same building or complex does not cause
that building or complex to become a single facility."

68. Page 17, line 9.
Strike: "handling"
Insert: "management"

69. Page 17, line 13.
Strike: "disposal"
Insert: "management"

70. Page 17, line 14.
Strike: "disposal"
Insert: "management"

71. Page 18, line 16.
Following: "shall"
Insert: ", no later than June 30, 1990,"

72. Page 19, line 3.
Following: "an"
Insert: "initial permit"

73. Page 19, line 4.
Following: "commercial"
Strike: "treatment, storage, or disposal"
Following: "facility;"
Strike: "and"

74. Page 19, lines 5 through 9.
Strike: "a" on line 5
Following: "fee" on line 5
Strike: "reduction"
Insert: "reductions"
Following: "interregional transportation" on lines 5 and 6
Insert: "or management"

March 23, 1989
Page 10

Strike: "if" on line 6 through "transport." on line 9

Insert: "as provided for in [sections 7 and 8]; and

(7) establishing, for the purpose of determining the infectious waste management fee to which a facility is subject under [section 8], methods for determining or estimating the amount of infectious waste managed at a facility."

75. Page 19, line 11.

Strike: "treatment, storage, and disposal"

Insert: "management"

76. Page 19, lines 13 and 14.

Strike: "treatment" on line 13 through "disposal" on line 14

Insert: "management"

77. Page 19, line 17.

Strike: "for the commercial activity"

Insert: "pursuant to [section 6]"

78. Page 19, line 19.

Strike: "treatment, storage, or disposal"

Insert: "management"

79. Page 19, line 22.

Strike: "handled"

Insert: "managed"

80. Page 19, line 24.

Strike: "handled"

Insert: "managed"

81. Page 20, line 10.

Strike: "by certified mail"

82. Page 22, line 6.

Strike: "\$10,000"

Insert: "\$1,000"

83. Page 22, line 9.

Strike: "\$10,000"

Insert: "\$5,000"

84. Page 22, line 14.

Strike: "treats, stores, or disposes of hazardous"

Insert: "manages infectious"

85. Page 22, line 22.

Strike: "\$20,000"

Insert: "\$10,000"

86. Page 25.

Following: line 6

Insert: " NEW SECTION. Section 24. Applicability dates --

retroactive applicability for infectious waste management fee. (1) The department may enforce the management standards provided for in [section 5] and adopted by rule under [section 14] only for violations occurring after June 30, 1990.

(2) Requirements for an infectious waste management permit and an infectious waste transport permit apply after June 30, 1990.

(3) The infectious waste management fee provided for in [section 8] applies retroactively, within the meaning of 1-2-109, to waste managed during 1989.

(4) The annual infectious waste transport fee provided for in [section 7] applies to transporters operating after June 30, 1990. The initial permit is valid from July 1, 1990, through December 31, 1990.

(5) The requirement for an infectious waste manager provided for in [section 10] applies after September 30, 1989, and the initial infectious waste management report must be submitted on or before March 31, 1990.

(6) [This act] does not apply to the normal operations of any mortuary as defined in 37-19-101 or any crematory as defined in 35-21-101 until July 1, 1991."

Renumber: subsequent section

STANDING COMMITTEE REPORT

March 23, 1989

Page 1 of 4

Mr. Speaker: We, the committee on Natural Resources report that HOUSE BILL 752 (first reading copy -- white), with statement of intent included, do pass as amended.

Signed: Bob Raney
Bob Raney, Chairman

And, that such amendments read:

1. Title, line 6.

Following: the first "SOLID WASTE"

Strike: ";

Insert: "TRANSPORTED BETWEEN REGIONS; PROVIDING FOR A WAIVER OF THE FEE WHEN THE INCINERATION OR DISPOSAL IS CONSISTENT WITH SPECIFIED CRITERIA; EXEMPTING EXISTING SOLID WASTE INCINERATION AND DISPOSAL FROM THE FEE;"

2. Title, line 8.

Following: "FEE;"

Insert: "PROVIDING A CIVIL PENALTY FOR VIOLATIONS OF SOLID WASTE DISPOSAL LAWS AND RULES;"

3. Title, line 11.

Following: "75-10-104"

Strike: "AND"

Insert: ";

Following: "75-10-105,"

Insert: "AND 75-10-214,"

Following: "PROVIDING"

Insert: "AN IMMEDIATE"

4. Title, line 12.

Strike: "DATES"

Insert: "DATE"

5. Page 1, line 19.

Following: "1]"

Insert: "and for the waiver of the fee when consistent with the criteria provided in [section 1(2)]"

6. Page 2, line 7.

Strike: "board"

Insert: "department"

7. Page 2, lines 8 and 9.

Strike: "have" on line 8 through "to" on line 9

Insert: "waive the fee for"

8. Page 2, line 12.

Strike: "the"

Insert: "Montana's"

9. Page 2, line 13.

Following: "safety,"

Strike: "and"

Following: "welfare"

Strike: "and the"

Insert: ", and"

10. Page 2, lines 15 through 20.

Strike: "Fee" on line 15 through line 20 in its entirety

Insert: "The incineration or disposal of solid waste at a
licensed facility in the manner and quantity incinerated or
disposed of before [the effective date of this act] is
exempt from the solid waste management fee."

11. Page 3, line 8.

Strike: "subsection"

Insert: "subsections"

Following: "(2)"

Insert: "and (3)"

12. Page 3, line 13.

Following: "fee"

Insert: "of \$1 for each ton of solid waste generated in a
different region and incinerated or disposed of at the
facility."

13. Page 3, line 14 through line 11, page 4.

Strike: Page 3, line 14 through line 11, page 4 in its entirety

Insert: "(2) The fee provided in subsection (1) must be waived
if the department"

14. Page 4, line 14.

Strike: "the"

Insert: "Montana's"

Following: "safety,"

Strike: "and"

15. Page 4, line 15.

Following: "welfare"

Insert: ", "

Following: "and"

Strike: "the"

16. Page 4, lines 17 through 25.

Strike: subsection (b) in its entirety

Insert: "(3) The incineration or disposal of solid waste at a licensed facility in the manner and quantity incinerated or disposed of before [the effective date of this act] is exempt from the solid waste management fee."

Renumber: subsequent section

17. Page 5, line 14.

Following: "2"

Strike: "and"

Insert: ", "

Following: "this part"

Insert: ", and [section 5]"

18. Page 6.

Following: line 3

Insert: "(4) This section does not relieve an owner or operator of a facility that incinerates 70 tons or less of solid waste a day from the obligation to obtain any permit otherwise required under this chapter or rules implementing this chapter.

NEW SECTION. Section 6. Civil penalties. (1) A person who violates any provision of this part, a rule adopted under this part, or a license provision is subject to a civil penalty not to exceed \$1,000. Each day of violation constitutes a separate violation.

(2) The department may institute and maintain in the name of the state any enforcement proceedings under this section. Upon request of the department, the attorney general or the county attorney of the county where the violation occurred shall petition the district court to impose, assess, and recover the civil penalty."

Renumber: subsequent sections

19. Page 9, lines 1 through 3.

Strike: "recommendations" on line 1 through "interregional"

Insert: "a waiver of"

20. Page 10.

Following: line 8

Insert: "Section 9. Section 75-10-214, MCA, is amended to read:
"75-10-214. Exclusions -- exceptions to exclusions. (1)

This part may not be construed to prohibit a person from disposing of his own solid waste generated in Montana upon land owned or leased by that person or covered by easement or permit as long as it does not create a nuisance or public health hazard.

(2) The exclusion contained in subsection (1) of this section does not apply to a division of land of 5 acres or less made after July 1, 1977, which falls within the definition of subdivision in Title 76, chapter 4, part 1, or the Montana Subdivision and Platting Act in Title 76, chapter 3. ""

Renumber: subsequent sections

21. Page 10.

Following: line 21

Insert: "(3) [Section 6] is intended to be codified as an integral part of Title 75, chapter 10, part 2, and the provisions of Title 75, chapter 10, part 2, apply to [section 6]."

22. Page 11, lines 3 through 6.

Strike: "dates" on line 3 through "are" on line 6

Insert: "date. [This act] is"

STANDING COMMITTEE REPORT

March 20, 1989

Page 1 of 6

Mr. Speaker: We, the committee on Natural Resources report that HOUSE BILL 757 (first reading copy -- white), with statement of intent included, do pass as amended.

Signed: Bob Raney
Bob Raney, Chairman

And, that such amendments read:

1. Page 2, line 15 through line 23, page 4.
Strike: page 2, line 15 through line 23, page 4 in its entirety
2. Page 5, line 11 through line 5, page 6.
Strike: page 5, line 11 through line 5, page 6 in its entirety
3. Page 8, lines 6 through 11.
Strike: subsection (7) in its entirety
Renumber: subsequent subsections
4. Page 9, lines 7 through 9.
Following: "advisory" on line 7
Strike: ", "
Insert: "or a"
Following: "no"
Strike: "observable effect"
Insert: "adverse response"
Following: "level"
Strike: ", " on line 7 through "level" on line 9
5. Page 10, line 1.
Strike: "aquifer"
Insert: "aquiifer"
6. Page 10, line 20.
Following: "that"
Insert: ", when exceeded,"
Following: "presents a"
Insert: "potential"
7. Page 11, lines 9 and 10.

Strike: "that" on line 9 through "control" on line 10

8. Page 11, lines 13 through 15.

Following: "in ground water"

Strike: ", " on line 13 through "water" on line 15

9. Page 11, line 18.

Strike: "and"

Insert: ", "

Following: "use"

Insert: ", and the use of alternative agricultural methods"

10. Page 12, line 4.

Strike: "conducting"

Insert: "promoting"

11. Page 15, line 16.

Strike: "may"

Insert: "shall"

12. Page 16, line 14.

Strike: "(7)"

Insert: "(4)"

13. Page 16, line 16.

Following: "justified."

Insert: "Promulgated federal standards must receive preference."

Strike: "subsection (7)"

Insert: "subsections (3) and (4)"

14. Page 17, lines 8 through 25.

Strike: subsections (3) and (4) in their entirety

Re-number: subsequent subsections

15. Page 18, line 2.

Strike: "and"

Insert: "or"

16. Page 18, line 10.

Strike: "60"

Insert: "15"

17. Page 18, lines 19 and 20.

Strike: "and" on line 19 through "EPA" on line 20

18. Page 18, line 21.

Following: "EPA"

Insert: "establishes or"

19. Page 18, lines 23 through 25.

Strike: "In" on line 23 through "the" on line 25

Insert: "The"

Strike: "base" on line 25

Insert: "consider the following in adopting"

20. Page 19, line 1.

Strike: "it adopts"

Following: "subsection"

Strike: "(5) or (6) on"

Insert: "(3) or (4)"

21. Page 19, line 2.

Following: "(a)"

Insert: "effects on"

22. Page 19, line 16.

Strike: "may"

Insert: "shall"

23. Page 19, line 20.

Strike: "entering"

Insert: "to enter"

24. Page 19, line 23.

Strike: "and ground water"

25. Page 19.

Following: line 23

Insert: "(2) Any person who receives a chemical analysis indicating the presence of an agricultural chemical in ground water shall notify the department of health and environmental sciences."

Renumber: subsequent subsection

26. Page 20, line 9.

Strike: "to ground water users"

27. Page 20, line 10.

Following: "to"

Strike: "the"

Insert: "ground water"

28. Page 20, line 11.

Strike: "the"

Insert: "any"

29. Page 21, lines 1 through 18.

Strike: "to" on line 1 through "time" on line 18

30. Page 22, lines 8 and 9.
Following: "application" on line 8
Strike: "or" through "through" on line 9
Insert: "; (b)"
31. Page 22, line 13.
Strike: "(b)"
Insert: "(c)"
32. Page 22, lines 15 through 25.
Strike: subsection (6) in its entirety
33. Page 23, line 2.
Strike: "may"
Insert: "shall"
34. Page 23, line 4.
Following: "management plan"
Insert: "to achieve the policies of [section 3]"
Following: "This plan"
Strike: "may"
Insert: "must"
35. Page 23, line 6.
Following: "practices."
Insert: "Prior to publication of the plan, the department shall
provide a 30-day period for the department of health and
environmental sciences to prepare and submit comments on the
plan."
36. Page 23, line 7.
Strike: "(10)"
Insert: "(11)"
37. Page 23, lines 10 through 13.
Following: "area" on line 10
Strike: "." on line 10 through "criteria" on line 13
38. Page 23.
Following: line 20
Insert: " (c) when agricultural chemicals have been determined
to have migrated in the ground water from the point of
detection;"
Re-number: subsequent subsections
39. Page 24, line 7.
Following: "(3)"
Insert: "Any person using an agricultural chemical that is

addressed by a specific agricultural chemical ground water management plan in the geographical region that is addressed by the plan must comply with the plan."
Following: "may"
Insert: "specifically"

40. Page 24, lines 8 through 11
Strike: lines 8 through 11 in their entirety
Insert: "who are under the plan and may inform any person about the plan."

41. Page 24.
Following: line 11
Insert: "(4) The department shall prioritize preparation of specific agricultural chemical ground water management plans in consideration of the specific circumstances of each area and within available resources."
Renumber: subsequent subsections

42. Page 24, lines 15 and 16.
Strike: "as" on line 15 through "water" on line 16

43. Page 24, line 23; page 24, line 25; and page 25, line 2 (twice).
Strike: "board"
Insert: "department of health and environmental sciences"

44. Page 26, line 10.
Following: "rules;"
Strike: "and"

45. Page 26, line 11.
Following: "requirements"
Insert: "; and (k) alternative soil fertility practices"

46. Page 26, line 14.
Strike: "beneficial uses"
Insert: "benefits of appropriate use"

47. Page 26, line 22.
Strike: "is not required to"
Insert: "may"
Strike: "or"
Insert: "and"

48. Page 26, line 24 through line 7, page 27.
Strike: "until" on line 24 through "section" on line 7
Insert: "if the department and the department of health and environmental sciences determine that residues from

commercial fertilizer are present in the ground water"

49. Page 27.

Following: line 22

Insert: "(14) A person who sells agricultural land that is subject to the provisions of a specific agricultural chemical ground water management plan shall provide the buyer with written notice about his obligations under the plan and shall forward a copy of the notice to the department. The department is not responsible for enforcement of this subsection."

50. Page 28, line 1.

Following: "16.20.603,"

Insert: "16.20.1003,"

51. Page 28, line 2.

Following: "define"

Insert: "a specific agricultural chemical management plan prepared pursuant to [section 12] as"

52. Page 28, line 3.

Strike: "to include"

Insert: "for"

53. Page 28, lines 5 through 7.

Strike: "that" on line 5 through "[section 12]" on line 7

54. Page 30, lines 6 through 13.

Strike: subsection (1) in its entirety

Renumber: subsequent subsections

55. Page 32, lines 4 through 8.

Strike: subsection (5) in its entirety

56. Page 33, line 21.

Strike: "may" through "violator"

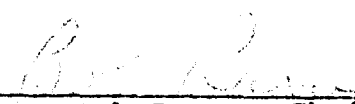
Insert: "shall coordinate actions when a violator is subject"

STANDING COMMITTEE REPORT

March 18, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report that House Bill 552 (first reading copy -- white) do pass as amended .

Signed: 
Bob Raney, Chairman

And, that such amendments read:

1. Title, line 11.

Following: "ACCOUNT"

Insert: "; TO APPROPRIATE \$50,000 FROM THE ACCOUNT TO THE
DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES"

2. Page 16, line 15.

Following: "(1)"

Insert: "(a)"

3. Page 16, line 18.

Following: "1991"

Strike: ", "

Insert: ". (b) There is appropriated \$50,000 from the account
to the department of health and environmental sciences"

4. Page 16, lines 19 and 20.

Strike: "by" on line 19 through "sciences" on line 20

5. Page 17, line 8.

Strike: "[Section 19] is"

Insert: "[Sections 18 and 19] are"

6. Page 17, line 9.

Strike: "18"

Insert: "17"

Amendments to House Bill No. 143
Introduced Copy

Requested by Rep. Addy
For the House Committee on Natural Resources

Prepared by H. Zackheim
February 28, 1989

1. Title, line 10.
Following: "82-10-402,"
Insert: "82-11-101,"

2. Page 6.

Following: line 24

Insert: "Section 4. Section 82-11-101, MCA, is amended to read:

"82-11-101. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Administrator" means the administrator of the division of oil and gas conservation.

(2) "Board" means the board of oil and gas conservation provided for in 2-15-3303.

(3) "Class II injection well" means a well, as defined by the federal environmental protection agency or any successor agency, that injects fluids:

(a) that have been brought to the surface in connection with oil or natural gas production;

(b) for purposes of enhancing the ultimate recovery of oil or natural gas; or

(c) for purposes of storing liquid hydrocarbons.

(4) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(5) "Determinations" means those decisions delegated to the state by or under authority of the Natural Gas Policy Act of 1978 or any successor or similar legislation relating to oil and gas.

(6) "Enhanced recovery" means the increased recovery from a pool achieved by artificial means or by the application of energy extrinsic to the pool; such artificial means or application includes pressuring, cycling, pressure maintenance, or injection into the pool of any substance or form of energy as is contemplated in secondary recovery and tertiary programs but does not include the injection in a well of a substance or form of energy for the sole purpose of aiding in the lifting of fluids in the well or stimulating of the reservoir at or near the well by mechanical, chemical, thermal, or explosive means.

(7) "Field" means the general area underlaid by one or more pools.

(8) "Fluid" means any material or substance that flows or moves, whether in a semisolid, liquid, sludge, gas, or any other form or state.

(9) "Gas" means all natural gases and all other fluid hydrocarbons as produced at the wellhead and not defined as oil in subsection (10) of this section.

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(10) "Oil" means crude petroleum oil and other hydrocarbons regardless of gravity which are produced at the wellhead in liquid form by ordinary production methods and which are not the result of condensation of gas before or after it leaves the reservoir.

(11) "Owner" means the person who has the right to drill into and produce from a pool and to appropriate the oil or gas he produces therefrom either for himself or others or for himself and others, and the term includes all persons holding such authority by or through him.

(12) "Person" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind and includes any agency or instrumentality of the state or any governmental subdivision thereof.

(13) "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of any state waters that exceeds that permitted by state water quality standards or standards adopted by the board, including but not limited to the disposal, discharge, seepage, drainage, infiltration, flow, or injection of any liquid, gaseous, solid, or other substance into any state waters that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife. A disposal, discharge, seepage, drainage, infiltration, flow, or injection of fluid that is authorized under a rule, permit, or order of the board is not pollution under this chapter.

(14) "Pool" means an underground reservoir containing a common accumulation of oil or gas or both; each zone of a structure which is completely separated from any other zone in the same structure is a pool, as that term is used in this chapter.

(15) "Producer" means the owner of a well or wells capable of producing oil or gas or both.

(16) "Responsible person" means a person who is determined by the board under 82-10-204 to have abandoned an oil or gas well, injection well, sump, or seismographic shot hole and who is:

(a) a corporation, association, partnership, or other business organization with assets in excess of \$250,000; or

(b) if the business organization does not have assets in excess of \$250,000, a natural person with primary ownership in the business organization.

~~(16)~~ (17) "State waters" means any body of water, either surface or underground.

~~(17)~~ (18) "Waste" means:

(a) physical waste, as that term is generally understood in the oil and gas industry;

(b) the inefficient, excessive, or improper use of or the unnecessary dissipation of reservoir energy;

(c) the location, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner which causes or tends to cause reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper

3-17-89

operations or which causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas; and

(d) the inefficient storing of oil or gas. (The production of oil or gas from any pool or by any well to the full extent that the well or pool can be produced in accordance with methods designed to result in maximum ultimate recovery, as determined by the board, is not waste within the meaning of this definition.)"

Renumber: subsequent sections

2
Date 3-17-89
HJ 143

Amendments to House Bill No. 143
Introduced Copy

Requested by Rep. O'Keefe

Prepared by H. Zackheim
February 10, 1989

1. Page 1.

Following: line 11

Insert: " STATEMENT OF INTENT

It is the intent of the legislature to create an oil and gas production damage mitigation account to be administered by the board of oil and gas conservation for the purpose of properly plugging and abandoning oil and gas wells when a responsible party cannot be found or when the responsible party does not have sufficient financial resources. The board shall adopt rules to help it define "sufficient financial resources", shall require a responsible party to pay the costs of plugging and abandoning to the extent of his available resources, and shall pursue full cost recovery for funds spent from the account through the procedures provided in [section 9] or other lawful means. The board may adopt rules to administer instituting a lien on the party's personal and real property to cover the cost of plugging and abandoning.

The legislature intends that the board use the account for reclamation related to land, water, or wildlife resources disturbed by abandoned oil and gas wells, injection wells, sumps, and seismographic shot holes.

It is also the intent to remove producing wells completed after June 30, 1989, from drilling bonds and to limit the liability of the bond or its equivalent to the period between issuance of the bond and either proper plugging and abandoning of a dry hole or completion of a producing well. The board shall adopt forms for the producer to indicate that a well has been completed and shall, upon receipt of the information and payment required under [section 7], release and absolve the owner of the well from the bond required under 82-11-123.

It is further the intent of the legislature that the board of oil and gas conservation respond promptly to emergency situations that may arise."

2. Page 2, line 8.

Following: "(ii)"

Insert: "beginning in fiscal year 1992,"

Strike: "\$250,000"

Insert: "\$50,000"

3. Page 5, line 21.

Strike: "which"

Insert: "that"

3-17-87

4. Page 5, line 24.

Strike: "list shall"

Insert: "record must"

5. Page 6, line 3.

Strike: "the preceding"

Following: "subsection"

Insert: "(1)"

6. Page 6, line 4.

Following: "determine"

Insert: "and list"

7. Page 6, lines 12 and 13.

Strike: "under" on line 12 through "subsection" on line 13

Insert: "or when the person does not have sufficient financial resources to pay for complete reclamation"

8. Page 6, lines 17 and 18.

Strike: "established" on line 17 through "available" on line 18

Insert: "in a manner consistent with the requirements for the use of the account provided in [section 6] and [section 9]"

9. Page 9, line 8.

Strike: "as required "

Insert: "for the purposes of using the oil and gas production damage mitigation account established"

10. Page 11, line 7.

Following: "the"

Insert: "owner notifies the"

Strike: "is" through "[section 7]"

11. Page 11, line 9.

Strike: "is" through "provisions"

Insert: "meets the requirements"

12. Page 12, line 6.

Strike: "1989"

Insert: "1991"

13. Page 12, line 8.

Strike: "\$250,000"

Insert: "\$50,000"

14. Page 12, line 13.

Strike: "\$500,000"

Insert: "\$200,000"

15. Page 12, line 15.

Strike: "\$500,000"

Insert: "\$200,000"

16. Page 12, line 17.

Strike: "\$500,000"

Insert: "\$200,000"

Strike: "\$250,000"

Insert: "\$50,000"

17. Page 12.

Following: line 19

Insert: "(3) In addition to the allocation provided in subsection (2), there must be deposited in the oil and gas production damage mitigation account:

(a) all funds received by the board pursuant to 82-11-136; and

(b) all fees received by the board from owners of producing wells pursuant to [section 7]."

Renumber: subsequent subsections

18. Page 12, line 25 through line 1, page 13.

Following: "abandoned"

Strike: ", " on line 25 through "quantities," on line 1

19. Page 13, line 2.

Strike: "located"

Insert: "or the responsible person does not have sufficient funds to pay the costs. The responsible person shall, however, pay costs to the extent of his available resources and is subsequently liable to fully reimburse the account or shall be subject to a lien on property as provided in [section 9] for costs expended from the account to properly plug the well and to mitigate any damage caused by the well."

20. Page 13, line 11.

Strike: "application of"

Insert: "receipt of notification by"

21. Page 13, line 12.

Strike: "in"

Insert: "on"

Following: "board"

Insert: ", payment by the owner of \$125,"

Strike: "upon providing"

Following: "proof"

Insert: "from the owner"

22. Page 14, line 5.

Strike: "-- priority"

23. Page 14, lines 7 and 8.

Following: "account"

Strike: ", " on line 7 through "[section 6(3)]" on line 8

Insert: "under [section 6(4)]"

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24. Page 14, line 9.

Following: "year"

Insert: ", "

25. Page 14, lines 11 and 12.

Following: "person," on line 11

Strike: "as" on line 11 through "[section 4]," on line 12

26. Page 14, lines 14 and 15.

Following: "person," on line 14

Strike: "as" on line 14 through "[section 4]," on line 15

Following: "not"

Insert: "fully"

27. Page 14, lines 19 through 21.

Strike: "has" on line 19 through "may" on line 21

Insert: "must"

Following: "to" on line 21

Strike: "the"

Insert: "all"

28. Page 14, line 22.

Following: "the"

Insert: "responsible"

Strike: "as determined under [section 4]"

29. Page 14, lines 23 through 25.

Strike: "has" on line 23 through "[section 4]" on line 25

Insert: "is valid until paid in full or otherwise discharged.

The lien must be foreclosed in accordance with applicable laws governing foreclosure of mortgages and liens."

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3
DATE 3-17-89
HB 143
17 pages

1
2 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING MANAGEMENT
3 STANDARDS FOR INFECTIOUS WASTE; REQUIRING PERMITS FOR
4 COMMERCIAL INFECTIOUS WASTE MANAGEMENT FACILITIES AND
5 TRANSPORTERS; ESTABLISHING FEES AND PERMITS FOR INFECTIOUS
6 WASTE ~~DISPOSAL~~ MANAGEMENT AND TRANSPORT; CREATING AN
7 INFECTIOUS WASTE MANAGEMENT SPECIAL REVENUE ACCOUNT;
8 REQUIRING FACILITIES TO APPOINT AN INFECTIOUS WASTE MANAGER AND
9 TO SUBMIT REPORTS; ESTABLISHING INFECTIOUS WASTE ~~DISPOSAL~~
10 MANAGEMENT REGIONS; AUTHORIZING THE DEPARTMENT OF HEALTH AND
11 ENVIRONMENTAL SCIENCES TO CONDUCT INSPECTIONS, COLLECT
12 SAMPLES, AND EXAMINE RECORDS; ESTABLISHING A MORATORIUM ON
13 THE ADDITIONAL COMMERCIAL TREATMENT, STORAGE, OR ~~DISPOSAL~~
14 MANAGEMENT OF INFECTIOUS WASTE UNTIL REGULATIONS ARE ADOPTED;
15 PROVIDING ADDITIONAL AIR QUALITY PERMIT REQUIREMENTS FOR CERTAIN
16 COMMERCIAL FACILITIES THAT INCINERATE INFECTIOUS WASTE; AND
17 PROVIDING APPLICABILITY DATES, A RETROACTIVE APPLICABILITY DATE
18 FOR THE INFECTIOUS WASTE MANAGEMENT FEE, AND AN IMMEDIATE
19 EFFECTIVE DATE."

20
21 STATEMENT OF INTENT

22 It is the intent of the legislature than the department of health and
23 environmental sciences adopt enforceable regulations to implement the infectious
24 waste management standards provided in [section 5]. These regulations must be
25 designed to protect the public health, safety, and welfare and the environment
26 and must be developed in consideration of the best current technical information,
27 guidance from other states and the federal government, and the needs of
28 Montana's medical service community.

29 As part of the regulations implementing the management standards provided
30 in [section 5], the department shall consider the following specific requirements:

31 (1) Infectious waste, except for sharps, must be contained in disposable
32 plastic bags or other appropriate containers that are impervious to moisture and
33 have a strength sufficient to preclude ripping, tearing, or bursting under normal
34 conditions of use. The bags must be securely tied to prevent leakage during

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1 storage, handling, or transport.

2 (2) Sharps subject to storage, transport, treatment, or disposal must be
3 packaged in leakproof, rigid, puncture-resistant containers that are taped closed
4 or tightly lidded to preclude loss of the contents.

5 (3) Locations where infectious waste is contained must be secured to deny
6 access by unauthorized persons and must be marked with "biological hazard" or
7 "biohazard" signs.

8 (4) Bags used for containment of infectious waste must be red or orange
9 and clearly identified.

10 (5) Rigid containers of discarded sharps must be labeled as "biomedical
11 waste" or placed in the bags used for other infectious waste.

12 It is further the intent of the legislature that the department adopt necessary
13 rules related to infectious waste management permits, infectious waste transport
14 permits, collection of fees, financial assurance requirements, and public hearing
15 requirements.

16 The legislature intends that the rules ensure that permits for large-scale
17 incineration of infectious wastes not be issued until the department and the
18 public have the necessary information to understand environmental and public
19 health consequences and until these consequences constitute a negligible risk to
20 the public health, safety, and welfare and to the environment.

21 The department shall adopt rules providing for a waiver of the per-pound
22 interregional management fee for interregional management that results in an
23 equivalent or reduced risk to Montana's public health, safety, welfare, and
24 environment when compared to the alternative of intraregional management. The
25 fee waiver authorized by this rule is intended to ensure that any current and
26 safe interregional management practices are not subject to undue expense. If a
27 commercial facility does not manage any infectious waste for which the per-
28 pound fee is assessed, the annual operating fee for that commercial facility must
29 be determined pursuant to [section 8(1)(b)(iii)].

30 The department shall also adopt rules ~~providing~~ implementing the provisions
31 of [section 7] that provide a reduction in the fee for any interregional transport
32 of infectious waste that ~~reduces the results in an equivalent or reduced risk to~~
33 ~~the Montana's public health, safety, and welfare, and to the environment when~~
34 compared to the alternative of intraregional transport. The fee reduction is

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intended to ensure that any current and safe transport practices are not subject to undue expense.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. This act may be cited as the "Infectious Waste Management Act".

NEW SECTION. Section 2. Policy and purpose. (1) It is the policy of the state of Montana to manage the treatment, storage, transportation, and disposal of infectious waste in an efficient and effective manner, recognizing the needs of the medical service community, recipients of medical care, and persons whose health, safety, and property may be affected by exposure to infectious waste and its disposal residues. It is further the policy of the state of Montana to provide the governmental services necessary to ensure that Montana's land, air, and water resources are protected from contamination by infectious waste treatment, storage, transportation, and disposal.

(2) The purposes of [sections 1 through 19] are:

(a) to provide for the effective regulation of infectious waste management in Montana;

(b) to establish a waste management structure that encourages cooperative management of infectious waste within a geographic region;

(c) to provide fees to support state regulation and oversight of infectious waste disposal management;

(d) to apply fees most heavily on management systems that create environmental or public health hazards through long-range transportation of infectious waste and through the concentration of infectious waste at treatment, storage, or disposal sites;

(e) to ensure that Montanans are protected from potentially adverse air quality effects of infectious waste incineration; and

(f) to impose a moratorium on additional commercial treatment, storage, and disposal of infectious waste until the state of Montana has adopted infectious waste management regulations.

NEW SECTION. Section 3. Definitions. Unless the context requires otherwise, in [sections 1 through 19] the following definitions apply:

(1) "Account" means the infectious waste management account provided for

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1 in [section 9].

2 (2) "Board" means the board of health and environmental sciences provided
3 for in 2-15-2104.

4 (3) "Commercial facility" means a nonprofit or for-profit facility that in return
5 for consideration accepts infectious waste, other than that generated on its own
6 premises, for treatment, storage, or disposal. The term does not mean a hospital
7 or other ~~medical health care~~ facility that accepts infectious waste for treatment,
8 storage, or disposal ~~infectious waste that is generated within its region.~~

9 (4) "Commercial transporter" means a person who, in return for
10 consideration, transports infectious waste to a management location.

11 (5) "Contaminated" means harboring a pathogen in a state that could
12 transmit infection or disease.

13 (6) "Decontamination" or "to decontaminate" means a process of rendering
14 noninfectious through steam sterilization, chemical treatment, or other sterilization
15 procedures a container, implement, or other article contaminated by infectious
16 waste.

17 **RENUMBER FOLLOWING SUBSECTIONS**

18 (4) "Department" means the department of health and environmental
19 sciences provided for in Title 2, chapter 15, part 21.

20 (5) "Disposal" or "to dispose" means the ~~discharge, injection, deposit,~~
21 ~~dumping, spilling, leaking, or placement of any infectious waste into or onto the~~
22 ~~land or water so that the hazardous waste or any constituent of it may enter the~~
23 ~~environment or be emitted into the air or discharged into any water, including~~
24 ~~ground water~~ final placement of infectious waste.

25 (6) "Effectively treated" means processed in a manner to render the
26 infectious waste ~~sterile~~ noninfectious.

27 (7) "Facility" or "infectious waste management facility" means all contiguous
28 land and structures, other appurtenances, and improvements on the land used
29 for treatment, storage, or disposal of infectious waste. A facility may consist of
30 several treatment, storage, or disposal operational units.

31 (8) "Generate" means to produce infectious waste.

32 (9) "Infectious waste" means ~~isolation wastes;~~ cultures and stocks of
33 infectious agents and associated biologicals; human blood and blood products;
34 contaminated human body parts and bedding; pathological wastes; ~~contaminated~~

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~~sharp instruments and objects sharps; contaminated animal carcasses, animal body parts, and veterinary dressings that are a potential suspected as a source of human pathogens; wastes from surgeries or autopsies; miscellaneous laboratory wastes, including specimen containers, slides and cover slips, disposable gloves, aprons, and lab coats; dialysis unit wastes, such as tubing, filters, disposable sheets, towels, gloves, aprons, and lab coats; and contaminated equipment, such as equipment used in patient care, medical laboratories, and research and in the production and testing of certain pharmaceuticals. wastes from humans or animals that are isolated to protect humans from communicable diseases; and wastes generated in connection with patient care that are known to be contaminated.~~ Infectious waste includes any otherwise noninfectious waste that has been stored, bagged, or otherwise placed in direct contact with infectious waste. The term does not mean any of the wastes referred to in this subsection that have been treated in a manner that has rendered the waste sterile noninfectious.

(13) "Management" or "to manage" means treatment, storage, or disposal, except that the term does not mean the disposal of infectious waste that has been rendered noninfectious.

(14) "Noninstitutional facility" means the office or clinic of a health care professional licensed under Title 37 that is not within a health care facility as defined in 50-5-101.

RENUMBER FOLLOWING SUBSECTIONS

(10) "Permit" means an infectious waste management permit provided for in [section 6].

(11) "Person" means an individual, firm, partnership, company, commercial entity, corporation, or association.

(12) "Region" means an infectious waste ~~disposal~~ management region, as provided for in [section 13].

~~(13) "Sterilization" means a process to make an infectious waste free of living organisms, particularly microorganisms.~~

(17) "Sharps" means any discarded health care article that may cause punctures or cuts, including but not limited to needles, intravenous tubing with needles attached, scalpel blades, glassware, and syringes that have been removed from their original sterile containers.

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1 (18) "Steam sterilization" means a treatment method for infectious waste
2 utilizing saturated steam within a pressure vessel (known as a steam sterilizer,
3 autoclave, or retort) at time lengths and temperatures sufficient to kill infectious
4 agents within the waste.

5 **RENUMBER FOLLOWING SUBSECTIONS**

6 (14) "Storage" or "to store" means the actual or intended containment of
7 wastes, either on a temporary or a long-term basis.

8 (15) "Transportation" or "to transport" means the movement of infectious
9 waste from the point of generation to any intermediate points and finally to the
10 point of ultimate treatment or disposal.

11 (16) "Treatment" or "to treat" means the application of a method, technique,
12 or process, including incineration, designed to change the character of an
13 infectious waste so as to render it ~~sterile~~ noninfectious, safer for transportation
14 or storage, or reduced in volume.

15 NEW SECTION. Section 4. Prohibition. A person may not treat, store,
16 transport, or dispose of infectious waste in a manner inconsistent with the
17 provisions of [sections 1 through 19] or rules adopted under the provisions of
18 [sections 1 through 19].

19 NEW SECTION. Section 5. Management standards. (1) ~~Infectious~~ Except
20 as provided in subsection (3), infectious waste must be managed in compliance
21 with the following standards:

22 (a) Storage and containment must be characterized by:

23 (i) segregation by separate containment and identification of infectious waste
24 containers from point of generation through disposal;

25 (ii) use of containers that are secure, appropriately labeled and located,
26 made of materials suitable to prevent releases or punctures, and ~~properly~~
27 ~~disinfected~~ decontaminated if reusable;

28 (iii) handling that excludes compaction or other physical or mechanical
29 manipulation that provides an opportunity for release of infectious waste; and

30 (iv) compliance with time and temperature standards for storage conditions.

31 (b) (i) Treatment and disposal may be by the following methods only:

32 (A) incineration that provides complete combustion of the waste to
33 carbonized or mineralized ash;

34 (B) steam sterilization that will render the waste noninfectious; or

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1 (C) for the noncommercial disposal of small quantities of liquid or semiliquid
2 waste generated incidentally to a health care procedure, discharge to a sewer,
3 provided that secondary treatment is available, that federal, state, or local
4 regulations do not prohibit the discharge, and that aerosol formation does not
5 occur during the discharge; or

6 (D) any other technique approved by department rule that results in
7 effectively treated infectious waste.

8 (ii) Infectious waste or infectious waste incinerator ash that has been
9 effectively treated may be disposed of in a state-licensed landfill if the disposal
10 is in compliance with applicable federal, state, and local regulations.

11 (c) Transportation of infectious waste must include:

12 (i) use of containers that are secure, appropriately labeled and located,
13 made of materials suitable to prevent releases or punctures, and properly
14 disinfected decontaminated if reusable;

15 (ii) availability of decontamination and response procedures in the event of a
16 release;

17 (iii) compliance with time and temperature standards for residence on
18 vehicles or in loading or unloading areas;

19 (iv) identification of vehicles as carriers of infectious waste; and

20 (v) carrying of papers to accompany the infectious waste shipment that
21 describe the waste and identify the generator and the receiving facility.

22 (d) Workers involved in the generation, storage, treatment, transportation, or
23 disposal of infectious wastes must be provided with appropriate protective
24 clothing, equipment, information, and training to provide for their personal health
25 and safety and to ensure the protection of the public health, safety, and welfare
26 and the environment.

27 (2) Human fetuses and recognizable human body parts (other than teeth)
28 must be disposed of by incineration or interment.

29 {(3) A person who generates less than ¹⁰⁰50 pounds of infectious waste a
30 month and that packages, labels, and otherwise handles infectious waste in
31 accordance with the guidelines of the federal occupational safety and health
32 administration may store and transport infectious waste in the same manner as
33 noninfectious solid waste, but must comply with treatment and disposal
34 requirements and may not subject infectious waste to compaction.

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1 ~~(3)~~ (4) The department shall adopt specific requirements, under its
2 rulemaking authority in [section 14(1)], that apply to persons or facilities that
3 generate, treat, store, transport, dispose of, or work with infectious wastes to
4 achieve the management standards provided in this section.

5 NEW SECTION. Section 6. Permits for commercial facilities -- hearing. (1)
6 A commercial facility that ~~treats, stores, or disposes of~~ manages infectious waste
7 must possess ~~a~~ an infectious waste management permit issued by the
8 department.

9 (2) An application for a permit must be submitted on forms supplied by the
10 department and must include a complete description of the proposed operation
11 and physical facilities.

12 (3) In determining whether to issue a permit, the department shall consider:

13 (a) the capability of a facility to ensure that infectious waste management
14 will comply with the standards provided for in [section 5] and with the rules
15 adopted to implement the standards and will otherwise protect the public health,
16 safety, and welfare and the environment;

17 (b) whether the facility has the financial capability to conduct corrective
18 action for a release of infectious waste and to compensate third parties for
19 bodily injury and property damage resulting from a release; and

20 (c) for incinerators, the requirements of subsection (4).

21 (4) The department may not issue a permit to a facility to incinerate
22 infectious waste until the owner or operator and the department have satisfied
23 the conditions of [section 20], if applicable.

24 (5) The department shall conduct a public hearing on an initial permit
25 application ~~for a commercial treatment, storage, or disposal facility.~~

26 (6) (a) A permit is valid for 5 years and may be renewed as provided by
27 department rule.

28 (b) A proposed significant change in the quantity or method of treatment,
29 storage, or disposal of infectious waste at a permitted facility must be described
30 in an amended permit application submitted to the department for review. The
31 change may not be made without approval by the department.

32 (7) The department may modify, suspend, revoke, or terminate a permit for
33 failure to comply with the provisions of [sections 1 through 19], a rule adopted
34 under [sections 1 through 19], a permit condition, or an order of the department

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1 or board.

2 NEW SECTION. Section 7. Infectious waste transport permit -- fee. (1) No
3 later than June 30, 1990, the following persons shall possess an infectious waste
4 transport permit issued by the department:

5 (a) ~~a person who, in return for consideration, engages in the transport of~~
6 ~~infectious waste for treatment, storage, or disposal in Montana;~~

7 (b) ~~a person who transports in any month more than 1,000 pounds of~~
8 ~~infectious waste generated in Montana; or~~

9 (c) ~~a person who transports in any month more than 5,000 pounds of~~
10 ~~infectious waste from one state to another state through Montana. A commercial~~
11 ~~transporter shall possess an infectious waste transport permit issued by the~~
12 ~~department.~~

13 (2) In determining whether to issue an infectious waste transport permit, the
14 department shall consider:

15 (a) a transporter's knowledge of and ability to comply with standards and
16 requirements for infectious waste transportation;

17 (b) the suitability of vehicles and equipment to be used to transport
18 infectious wastes;

19 (c) the suitability of any terminals to be used for loading, unloading, or
20 temporary storage of infectious wastes; and

21 (d) the financial capability of the transporter to conduct corrective action for
22 a release of infectious waste and to compensate third parties for bodily injury
23 and property damage resulting from a release.

24 (3) An infectious waste transport permit is valid for 1 year and may be
25 renewed annually.

26 (4) (a) The department shall assess a fee of \$100 for an infectious waste
27 transport permit or permit renewal authorizing intraregional transport.

28 (b) (i) Except as provided in subsection (4)(b)(ii), the department shall
29 assess a fee of \$1,000 for an infectious waste transport permit or permit
30 renewal authorizing interregional transport ~~or transport of infectious waste from~~
31 ~~one state to another state through Montana.~~

32 (ii) The department ~~may~~ shall reduce the fee provided for in subsection
33 (4)(b)(i) to \$100 for interregional transport that ~~reduces the results in an~~
34 equivalent or reduced risk to the Montana's public health, safety, and welfare.

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1 and to the environment when compared to the alternative of intraregional
2 transport.

3 (5) All fees collected by the department must be deposited in the account
4 provided for in [section 9].

5 NEW SECTION. Section 8. Infectious waste ~~disposal~~ management fee. (1)

6 A person who operates any facility that ~~disposes of~~ manages infectious waste
7 must annually pay to the department an infectious waste ~~disposal~~ management
8 fee that is calculated based on the classification of the facility, the weight of the
9 infectious waste, and, for a commercial facility, the origin of the infectious waste,
10 as follows:

11 (a) For a noncommercial facility:

12 (i) that ~~disposes of~~ manages 5,000 pounds or more of infectious waste, the
13 annual fee is \$2,000;

14 (ii) that ~~disposes of~~ manages ¹²⁰⁰ 600 pounds or more but less than 5,000
15 pounds of infectious waste, the annual fee is \$250;

16 (iii) that ~~disposes of~~ manages ¹²⁰⁰ less than 600 pounds a year, there is
17 no fee.

18 (b) ~~For~~ Except as provided for in subsection (c), for a commercial facility:

19 (i) that ~~disposes only of~~ manages only infectious wastes generated within its
20 region and:

21 (A) that ~~disposes of~~ manages 50,000 pounds or more of infectious waste,
22 the annual fee is \$5,000;

23 (B) that ~~disposes of~~ manages less than 50,000 pounds of infectious waste,
24 the annual fee is \$2,000;

25 (ii) that ~~disposes of~~ manages infectious waste generated out of its region, the
26 annual fee is \$10,000 plus ~~10~~ 25 cents for each pound of infectious waste
27 ~~disposed of~~ generated in a different region and managed at the facility, except
28 as provided in subsection (1)(b)(iii).

29 (iii) (A) The department shall waive the per-pound fee for infectious waste
30 transported across regional boundaries to a commercial management facility if
31 the transport and management of that waste results in an equivalent or reduced
32 risk to Montana's public health, safety, welfare, and environment when compared
33 to the alternative of intraregional management. The fee waiver may apply only
34 to those specific waste streams meeting this criterion.

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1 (B) If a commercial facility manages only infectious waste for which a per-
2 pound fee is not assessed, the annual fee for that commercial facility is \$2,000
3 if the facility manages less than 50,000 pounds of infectious waste and \$5,000 if
4 the facility manages 50,000 pounds or more of infectious waste.

5 (c) For a commercial facility that manages a quantity of infectious waste no
6 greater than the quantity managed at that facility during 1988, the annual fee is
7 \$2,000.

8 (2) The infectious waste management fee must be paid no later than March
9 31 of the year following the calendar year for which the fee is assessed.

10 (2) (3) All fees collected by the department must be deposited in the
11 account provided for in [section 9].

12 NEW SECTION. Section 9. Infectious waste management account. (1)
13 There is an infectious waste management account in the state special revenue
14 fund provided for in 17-2-102.

15 (2) There must be deposited in the account:

- 16 (a) all revenue from the infectious waste ~~disposal~~ management fee;
17 (b) all revenue from the infectious waste transport permit fee;
18 (c) money appropriated to the account by the legislature;
19 (d) money that is received by the department in the form of gifts,
20 reimbursements, or appropriations from any source and that is intended to be
21 used for the purposes of the account.

22 (3) The account may be used by the department only for the administration
23 of [sections 1 through 19] and [section 20].

24 NEW SECTION. Section 10. Infectious waste manager. (1) The owner or
25 operator of each commercial or noncommercial facility where infectious wastes
26 are ~~generated, treated, stored, or disposed of~~ managed shall appoint an
27 infectious waste manager who is the individual for the department to contact on
28 all matters related to the management of infectious waste at the facility.

29 (2) The owner or operator shall submit to the department the name,
30 address, and telephone number of the infectious waste manager, along with any
31 other pertinent information requested by the department. The owner or operator
32 shall submit any change in this information to the department within 2 weeks of
33 the date of the change.

34 (3) The infectious waste manager shall provide the department with a

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1 suitable emergency procedure to ensure that an individual responsible for
2 infectious waste management at the facility may be contacted at all times.

3 NEW SECTION. Section 11. Reporting. (1) Except as provided in
4 subsection (4), an infectious waste manager shall annually submit to the
5 department on or before March ~~4~~ ³¹ a report on the infectious waste
6 management activities of the facility. The report must be submitted on a form
7 supplied by the department.

8 (2) The report must include:

9 (a) the quantity of infectious waste generated during the preceding calendar
10 year;

11 (b) the quantity of infectious waste ~~disposed of~~ managed at the facility
12 during the preceding year and the method of ~~disposal~~ management;

13 (c) the quantity of infectious waste that was generated at the facility and
14 ~~disposed of at~~ transported for management to a location other than the facility
15 and the location, method of ~~disposal~~ management, and method of transport for
16 ~~that disposal~~;

17 (d) the method and location of any storage of infectious waste;

18 (e) the current year's projected quantities of infectious waste generation,
19 treatment, storage, and disposal; and

20 (f) any other information requested by the department and necessary for the
21 administration of [sections 1 through 19].

22 (3) An infectious waste manager shall report to the department any
23 proposed ~~handling~~ management of quantities of infectious waste significantly in
24 excess of quantities indicated in the most current report. The proposal is subject
25 to department approval, as provided in [section 6].

26 (4) (a) The infectious waste manager of a facility that annually generates,
27 treats, stores, or disposes of less than ¹⁰⁰~~50~~ pounds of infectious waste a month
28 shall submit an initial notification to the department on a form supplied by the
29 department, but he is not required to submit annual reports.

30 (b) If, after providing an initial notification under subsection (4)(a), a facility
31 ~~handles~~ ¹⁰⁰~~manages~~ ⁵⁰ pounds or more of infectious waste in any month, the
32 manager shall submit an annual report for that year and for any subsequent
33 year in which the quantity exceeds ¹⁰⁰~~50~~ pounds of infectious waste in any month.

34 (c) The appointment of the same individual as infectious waste manager by

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1 two or more noninstitutional facilities in the same building or complex does not
2 cause that building or complex to become a single facility.

3 NEW SECTION. Section 12. Authority to inspect, collect samples, and
4 examine records. The department may:

5 (1) inspect facilities, vehicles, and equipment utilized in the management of
6 infectious wastes;

7 (2) collect samples of infectious waste or suspected infectious waste from
8 any facility, vehicle, equipment, or other location utilized in the ~~handling~~
9 management of infectious waste; and

10 (3) examine any records relating to infectious waste management.

11 NEW SECTION. Section 13. Infectious waste ~~disposal~~ management
12 regions. (1) There are six infectious waste ~~disposal~~ management regions, as
13 follows:

14 (a) eastern Montana, consisting of Phillips, Garfield, Rosebud, and Powder
15 River Counties and all Montana counties east of these counties;

16 (b) northern Montana, consisting of Blaine, Cascade, Chouteau, Glacier, Hill,
17 Liberty, Pondera, Teton, and Toole Counties;

18 (c) south central Montana, consisting of Bighorn, Carbon, Fergus, Golden
19 Valley, Judith Basin, Musselshell, Petroleum, Stillwater, Sweet Grass, Treasure,
20 Wheatland, and Yellowstone Counties;

21 (d) southwestern Montana, consisting of Beaverhead, Broadwater, Deer
22 Lodge, Gallatin, Granite, Jefferson, Lewis and Clark, Madison, Meagher, Park,
23 Powell, and Silver Bow Counties;

24 (e) northwest Montana, consisting of Flathead, Lake, Lincoln, Mineral,
25 Missoula, Ravalli, and Sanders Counties; and

26 (f) all areas outside of Montana.

27 (2) The department shall assist and encourage public health officials,
28 persons involved in infectious waste management, and the medical service
29 community to coordinate their activities within each region in Montana to provide
30 for the safe, efficient, and effective management of infectious waste.

31 NEW SECTION. Section 14. Rulemaking. The department shall, no later
32 than June 30, 1990, adopt rules:

33 (1) establishing regulations to implement the infectious waste management
34 standards provided in [section 5];

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1 (2) providing procedures for application and renewal of infectious waste
2 management permits and infectious waste transport permits;

3 (3) providing recordkeeping requirements for persons and facilities
4 generating, treating, storing, transporting, or disposing of infectious wastes;

5 (4) establishing financial assurance requirements for commercial facilities
6 and permitted transporters;

7 (5) requiring a public hearing on ~~an a permit~~ application for a commercial
8 ~~treatment, storage, or disposal~~ facility; and

9 (6) providing ~~a fee reduction~~ reductions for interregional transportation ~~or~~
10 management of infectious waste ~~if such transportation results in a reduced risk~~
11 ~~to the public health, safety, and welfare and to the environment when compared~~
12 ~~to the alternative of intraregional transport. as provided for in [sections 7 and 8];~~
13 and

14 (7) establishing, for the purpose of determining the infectious waste
15 management fee to which a facility is subject under [section 8], methods for
16 determining or estimating the amount of infectious waste managed at a facility.

17 NEW SECTION. Section 15. Moratorium on additional commercial
18 ~~treatment, storage, and disposal~~ management of infectious waste. (1) Except as
19 provided in subsection (2), a person may not engage in the commercial
20 ~~treatment, storage, or disposal~~ management of infectious waste until the
21 department has adopted rules implementing the infectious waste management
22 standards provided in [section 5] and until the person has obtained a permit for
23 ~~the commercial activity pursuant to [section 6].~~

24 (2) A commercial facility that is engaging or has engaged in the ~~treatment,~~
25 ~~storage, or disposal~~ management of infectious waste on or before [the effective
26 date of this act] may continue its commercial activities if:

27 (a) the quantity of infectious waste ~~handled~~ managed during any month does
28 not exceed the maximum quantity of infectious waste handled at the facility
29 during any month in 1988;

30 (b) the owner or operator submits a completed permit application no later
31 than 60 days after the application form is made available by the department;
32 and

33 (c) the permit application is not denied by the department.

34 NEW SECTION. Section 16. Administrative enforcement. (1) When the

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March 16, 1989

1 department believes that a violation of [sections 1 through 19], a violation of a
2 rule adopted under [sections 1 through 19], or a violation of a permit provision
3 has occurred, it may serve written notice of the violation ~~by certified mail~~ on the
4 alleged violator or his agent. The notice must specify the provision of [sections
5 1 through 19], the rule, or the permit provision alleged to be violated and the
6 facts alleged to constitute a violation and may include an order to take
7 necessary corrective action within a reasonable period of time stated in the
8 order. The order becomes final unless, within 30 days after the notice is served,
9 the person named requests in writing a hearing before the board. On receipt of
10 the request, the board shall schedule a hearing. Service by mail is complete on
11 the date of mailing.

12 (2) If, after a hearing held under subsection (1), the board finds that a
13 violation has occurred, it shall either affirm or modify the department's order
14 previously issued. An order issued by the department or by the board may
15 prescribe the date by which the violation must cease and may prescribe time
16 limits for particular action. If, after hearing, the board finds no violation has
17 occurred, it shall rescind the department's order.

18 (3) Instead of issuing an order pursuant to subsection (1), the department
19 may either:

20 (a) require the alleged violator to appear before the board for a hearing at
21 a time and place specified in the notice and answer the charges; or

22 (b) initiate action under [section 17, 18, or 19].

23 (4) This section does not prevent the board or department from making
24 efforts to obtain voluntary compliance through a warning, a conference, or any
25 other appropriate means.

26 NEW SECTION. Section 17. Injunctions. The department may institute an
27 action for injunctive relief as provided in Title 27, chapter 19, to:

28 (1) immediately restrain a person from engaging in any unauthorized activity
29 that endangers or causes damage to the public health, safety, and welfare or to
30 the environment;

31 (2) enjoin a violation of [sections 1 through 19], a rule adopted under
32 [sections 1 through 19], an order of the department or board, or a permit
33 provision without the necessity of prior revocation of the permit; or

34 (3) require compliance with [sections 1 through 19], a rule adopted under

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1 [sections 1 through 19], an order of the department or board, or a permit
2 provision.

3 NEW SECTION. Section 18. Civil penalties. A person who violates any
4 provision of [sections 1 through 19], a rule adopted under [sections 1 through
5 19], an order of the department, or a permit condition is subject to a civil
6 penalty not to exceed ~~\$10,000~~ \$1,000. Each day of violation constitutes a
7 separate violation.

8 NEW SECTION. Section 19. Criminal penalties. (1) (a) A person is subject
9 to a fine not to exceed ~~\$10,000~~ \$5,000 for each violation or imprisonment not
10 to exceed 6 months, or both, if he:

11 (i) knowingly transports infectious waste to an unpermitted facility;

12 (ii) ~~treats, stores, or disposes of hazardous~~ manages infectious waste without
13 a permit; or

14 (iii) makes any false statement or representation in any application, label,
15 manifest, record, report, permit, or other document filed or maintained as
16 required by the provisions of [sections 1 through 19] or rules adopted under
17 [sections 1 through 19].

18 (b) A person convicted of a subsequent violation of this section is subject
19 to a fine not to exceed ~~\$20,000~~ \$10,000 for each violation or imprisonment not
20 to exceed 1 year, or both.

21 (c) Each day of violation constitutes a separate violation.

22 (2) Action under this section does not bar enforcement of [sections 1
23 through 19], rules adopted under [sections 1 through 19], orders of the
24 department or the board, permits by injunction, or other appropriate remedies.

25 (3) Fines collected under this section, except money collected in a justice's
26 court, must be deposited in the state general fund.

27 NEW SECTION. Section 20. Infectious waste incineration -- additional
28 permit requirements. (1) The owner or operator of a commercial facility, as
29 defined in [section 3], who proposes to incinerate in any month a quantity of
30 infectious waste exceeding the maximum quantity of infectious waste incinerated
31 at the facility in any month during 1988 shall apply to the department, pursuant
32 to 75-2-211, for a permit authorizing the incineration and consequent emissions.

33 (2) The department may not issue a permit to a facility described in
34 subsection (1) until:

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1 (a) the owner or operator has provided to the department's satisfaction:

2 (i) a characterization of emissions and ambient concentrations of air
3 pollutants, including hazardous air pollutants, from any existing incineration at the
4 facility; and

5 (ii) an estimate of emissions and ambient air concentrations, including
6 hazardous air pollutants, from the incineration of infectious waste as proposed in
7 the permit application; and

8 (b) the department has reached a determination that the projected emissions
9 and ambient concentrations will constitute a negligible risk to the public health,
10 safety, and welfare and to the environment.

11 (3) The department shall require the application of air pollution control
12 equipment, engineering, or procedures as necessary to satisfy the determination
13 required under subsection (2)(b). The equipment, engineering, or procedures
14 must provide particulate and gaseous emission reductions equivalent to or more
15 stringent than those achieved through the best available control technology, in
16 addition to any other controls necessary to satisfy the determination required
17 under subsection (2)(b).

18 NEW SECTION. Section 21. Codification instruction. [Section 20] is
19 intended to be codified as an integral part of Title 75, chapter 2, part 2, and the
20 provisions of Title 75, chapter 2, part 2, apply to [section 20].

21 NEW SECTION. Section 22. Severability. If a part of [this act] is invalid,
22 all valid parts that are severable from the invalid part remain in effect. If a part
23 of [this act] is invalid in one or more of its applications, the part remains in
24 effect in all valid applications that are severable from the invalid applications.

25 NEW SECTION. Section 23. Extension of authority. Any existing authority
26 to make rules on the subject of the provisions of [this act] is extended to the
27 provisions of [this act].

28 NEW SECTION. Section 24. Applicability dates -- retroactive applicability for
29 infectious waste management fee. (1) The department may enforce the
30 management standards provided for in [section 5] and adopted by rule under
31 [section 14] only for violations occurring after June 30, 1990.

32 (2) Requirements for an infectious waste management permit and an
33 infectious waste transport permit apply after June 30, 1990.

34 (3) The infectious waste management fee provided for in [section 8] applies

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1 retroactively, within the meaning of 1-2-109, to waste disposed during 1989.

2 (4) The annual infectious waste transport fee provided for in [section 7]
3 applies to transporters operating after June 30, 1989. The initial permit is valid
4 from July 1, 1990, through December 1, 1990.

5 (5) The requirement for an infectious waste manager provided for in [section
6 10] applies after September 30, 1989, and the initial infectious waste
7 management report must be submitted on or before March 31, 1990.

8 (6) [This act] does not apply to the normal operations of any mortuary as
9 defined in 37-19-101 or any crematory as defined in 35-21-101 until July 1, 1991.

10 NEW SECTION. Section 25. Effective date. [This act] is effective on
11 passage and approval.

12 -END-

13

EXHIBIT

4

DATE

3-17-89

HB

H1875

HOUSE BILL 752 -- CONCEPTUAL AMENDMENTS

REP. RANEY

HOUSE NATURAL RESOURCES COMMITTEE

MARCH 17, 1989

1. Remove fee for intraregional solid waste disposal
2. Keep fee for in inter-regional but provide waiver for inter-regional transport within state
3. Allow fees to also be used for the implementation of [section 5] for air quality review of any proposed new incinerator
4. Change board to department for fee waivers
5. Close the loophole in current law (75-10-214) that would allow an out-of-state corporation to purchase or lease land in Montana and dispose of out-of-state solid waste on that land and not be subject to licensing or fees
6. Provide civil penalties of up to \$1,000 for violations of 75-10, part 2.

Amendments to Senate Bill No. 223
Third Reading Copy (BLUE)

Requested by Representative Hannah
For the Committee on Natural Resources

Prepared by Valencia Lane
March 16, 1989

1. Title, line 6.

Following: "BY"

Strike: remainder of line 6 through line 14 in its entirety

Insert: "PROVIDING THAT THE BOARD OF NATURAL RESOURCES AND
CONSERVATION MAY HOLD PROCEEDINGS FOR FINDINGS NECESSARY FOR
DETERMINING NEED SEPARATELY FROM PROCEEDINGS FOR FINDINGS
NECESSARY FOR DETERMINING ENVIRONMENTAL COMPATIBILITY; AND
AMENDING SECTION 75-20-301, MCA."

2. Strike: everything after the enacting clause

Insert: "Section 1. Section 75-20-301, MCA, is amended to read:

"75-20-301. Decision of board -- findings necessary for
certification. (1) Within 60 days after submission of the
recommended decision by the hearing examiner, the board
shall make complete findings, issue an opinion, and render a
decision upon the record, either granting or denying the
application as filed or granting it upon such terms,
conditions, or modifications of the construction, operation,
or maintenance of the facility as the board considers
appropriate.

(2) The board may not grant a certificate either as
proposed by the applicant or as modified by the board unless
it shall find and determine:

(a) the basis of the need for the facility;
(b) the nature of the probable environmental impact;
(c) that the facility minimizes adverse environmental
impact, considering the state of available technology and
the nature and economics of the various alternatives;

(d) each of the criteria listed in 75-20-503;
(e) in the case of an electric, gas, or liquid
transmission line or aqueduct:

(i) what part, if any, of the line or aqueduct shall
be located underground;

(ii) that the facility is consistent with regional
plans for expansion of the appropriate grid of the utility
systems serving the state and interconnected utility
systems; and

(iii) that the facility will serve the interests of
utility system economy and reliability;

(f) that the location of the facility as proposed
conforms to applicable state and local laws and regulations
issued thereunder, except that the board may refuse to apply
any local law or regulation if it finds that, as applied to
the proposed facility, the law or regulation is unreasonably
restrictive in view of the existing technology, of factors

of cost or economics, or of the needs of consumers, whether located inside or outside of the directly affected government subdivisions;

(g) that the facility will serve the public interest, convenience, and necessity;

(h) that the department of health or board of health ~~have~~ has issued a decision, opinion, order, certification, or permit as required by 75-20-216(3); and

(i) that the use of public lands for location of the facility was evaluated and public lands were selected whenever their use is as economically practicable as the use of private lands and compatible with the environmental criteria listed in 75-20-503.

(3) In determining that the facility will serve the public interest, convenience, and necessity under subsection (2)(g) of this section, the board shall consider:

(a) the items listed in subsections (2)(a) and (2)(b) of this section;

(b) the benefits to the applicant and the state resulting from the proposed facility;

(c) the effects of the economic activity resulting from the proposed facility;

(d) the effects of the proposed facility on the public health, welfare, and safety;

(e) any other factors that it considers relevant.

(4) Considerations of need, public need, or public convenience and necessity and demonstration thereof by the applicant shall apply only to utility facilities.

(5) For a facility defined in 75-20-104(10)(a) proposed by utility applicants, the board may make the findings required to determine need separately from the findings required to determine environmental compatibility. The board may authorize separate proceedings for each set of findings."

NEW SECTION. Section 2. Extension of authority. Any existing authority of authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act]."

ROLL CALL VOTE

HOUSE NATURAL RESOURCES

COMMITTEE

DATE 3-17-89 BILL NO. HB143 NUMBER 1

NAME	AYE	NAY
Rep. Hal Harper	✓	
Rep. Tom Hannah		✓
Rep. Mike Kadas	✓	
Rep. Mary McDonough	✓	
Rep. Lum Owens		✓
Rep. Vivian Brooke	✓	
Rep. Robert Clark		✓
Rep. Mark O'Keefe		
Rep. Leo Giacometto		✓
Rep. Bob Gilbert		✓
Rep. Kelly Addy	✓	
Rep. Clyde Smith		✓
Rep. Janet Moore	✓	
Rep. Rande Roth		✓
Rep. Ben Cohen, Vice-Chairman	✓	
Rep. Bob Raney, Chairman	✓	

TALLY

8 7

Charles Montagne
Secretary

Bob Raney
Chairman

MOTION: To move) Addy Amendment HB143 -

MINUTES

MONTANA SENATE 51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Thomas F. Keating, on April 5, 1989, at
1:00 p.m., Room 405, in the State Capitol.

ROLL CALL

Members Present: Senators: Thomas Keating, Larry Tveit,
Fred Van Valkenburg, Loren Jenkins, Lawrence Stimatz,
Pete Story, Cecil Weeding, Dorothy Eck and Jerry Noble.

Members Excused: Senators: Darryl Meyer, Bill Yellowtail
and Elmer Severson

Members Absent: None

Staff Present: Bob Thompson and Helen McDonald

Announcements/Discussion: None

HEARING ON HB 757

Presentation and Opening Statement by Sponsor:

Representative Leo Giacometto, District #24, sponsored this bill establishing an agricultural chemical ground water protection program administered by the Department of Agriculture and the Department of Health and Environmental Sciences. He noted that this measure has had a lot of amendments. It has been worked into the water quality act with approval of the Departments of Agriculture and Health and Environmental Sciences. As it now stands, the governor's office supports the bill.

List of Testifying Proponents and What Group they Represent:

Pam Langley, Mont. Agriculture Business, Mont. Farmers
Union, Mont. Grain Elevator Assn.
Everett Snortland, Mont. Department of Agriculture
John Semple, Montana Aviation Trades Association
Chuck Merja, Mont. Grain Growers Assn.
Lorna Frank, Farm Bureau
Nancy Matheson, Alternative Energy Resources
Organization
Chris Kaufman, Montana Environmental Information Center

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Pam Langley submitted written testimony. (Exhibit #2)

Everett Snortland submitted written testimony. (Exhibit #3)

John Semple submitted written testimony. (Exhibit #1)

Chuck Merja submitted written testimony. (Exhibit #4)

Lorna Frank submitted written testimony. (Exhibit #5)

Nancy Matheson said the goal of her organization, which is made up primarily of farmers and ranchers, is the long-term survivability of Montana agriculture. She thinks this bill will help protect Montana's agriculture and the public's health.

Chris Kaufman urges support of this bill as amended.

Questions From Committee Members:

Senator Noble said that on page 38, lines 4 through 9, it seemed like a lot of violations. He asked Representative Giacometto if that was the right way?

Representative Giacometto said it was his understanding that under the Water Quality Act similar language has already been used to enforce violations and require clean-up. He said the law has to have teeth to make sure that these violations don't happen in the future.

Senator Van Valkenburg noted that on page 38, line 2, the mental state for violating this act is written as "intentional". In most of Montana's criminal statutes, the language used is "purposefully or knowingly". Is there a reason why this bill says "intentionally" rather than using "purposefully or knowingly"?

Representative Giacometto said he wasn't familiar with the exact wording in the Water Quality Act. He didn't think there was an intent to change existing law, whether "purposefully or knowingly" or "intentionally" was used.

John Arrigo, Water Quality Bureau, Department of Health & Environmental Sciences said the Montana Water Quality Act refers to criminal penalties and uses the language "willfully and negligently".

Senator Eck asked if every chemical sold in the state is registered?

John Arrigo said pesticides used in Montana must be registered with the State Department of Agriculture. Also, chemicals that the Environmental Protection Agency (EPA) has identified as having a high probability of soaking into the soil and contaminating ground water must be registered. The EPA has identified chemicals to give guidance on what might be considered toxic if they were consumed.

Senator Eck asked what kind of process DHES has for developing its standards.

John Arrigo said the department does not have a toxicologist or a medical staff to develop these numbers on its own. However, in addition to EPA there are other states such as California and Arizona that have developed their own numbers and existing publications can help Montana.

Representative Giacommeto said under the law any chemical used in the state must be registered with the department. This bill will set the standards to make sure that if there is contamination in the water, the department will know what the health standards are to make sure that the water is safe.

Senator Eck asked if chemicals are registered now with the Department of Agriculture.

Representative Giacommeto said anything in this bill that has to do with scientific standards or regulations goes to DHES and that is why there is dual responsibility between the Department of Agriculture and the Department of Health and Environmental Sciences?

Senator Noble asked what the incidence of violation is in using wrong chemicals?

Representative Giacommeto said there aren't any known problems. Sometimes a chemical is used over a long period of time or sometimes too much chemical was put on and the departments want to make sure that the groundwater isn't polluted. This bill is really a preventive measure.

Senator Eck asked if the bill would apply to chemicals used for households.

Representative Giacommeto said the bill wasn't intended for household use. But if it was found out that groundwater was

being polluted by dandelion killers, then this information should be put out to the public.

Senator Keating said somewhere it was quoted that there are about 5,000 chemicals registered in the state. He presumes that these chemicals have been used over a period of time and yet there haven't been any cases of groundwater contamination to cause a panic or crisis. Usually people try to avoid government regulation and yet everybody is in here now supporting state control and regulation in a situation where there doesn't seem to be a problem.

Ms. Langley said the state doesn't know for sure what's out there. She wants the farmers and ranchers to act responsibly with chemicals. There has not been much monitoring done.

Senator Keating said he knows that farmers use chemicals in fertilizers and pesticides. His industry is a principal provider of the material that goes into agricultural products. When a salesman comes around to sell agriculture products, haven't the products been tested and proved to be non-toxic? Doesn't the federal government drug administration or EPA have to pass on these things as safe for human consumption? If Montana establishes that same sort of thing, aren't the standards being duplicated?

Mr. Snortland said the department would implement EPA's rules and regulations. This is a preventive maintenance program and certain chemicals would not be allowed for use in Montana. He thinks provisions in the 1990 farm bill will state that in order to receive program benefits a conservation plan and plan pesticide use plan will be required.

Senator Keating the agriculture department detected endrin and put a stop to it. They must have had legislative authority some place to do that.

Ralph Peck, Department of Agriculture, said all chemicals sold in Montana are registered. The department uses EPA information to register a product in Montana and use of that product is enforced based on the label requirements as provided by EPA.

Senator Keating asked if the department informs or educates users of chemicals?

Mr. Peck said there is a continuing education program plus the department's licensing system. Licensing applicators is part of that process. Chemical companies also provide education.

Senator Keating said there has been a lot of water monitoring and hydrology studies during of these previous programs. Have the water samples been tested for agriculture chemicals as well as mining chemicals and, if so, what has been detected?

John Arrigo said the Water Quality Bureau generally monitors water quality in association with the potential source of pollution. So, if there is a mine where the department thinks there might be a problem, the bureau will work with state lands and make sure the mine company checks for pollution. If it is a gasoline leak, then the responsible party checks for petroleum constituents. The Department of Agriculture has been screening for pesticides for the last three or four years.

Senator Keating said the water used by most the citizens in Billings for watering lawns and sprinkling systems is charged by irrigation in the valley. If there wasn't irrigation, there wouldn't be any water for watering lawns. Senator Keating knows his neighbors have sent samples in to be tested and he has never ever heard of any chemical pollutant being discovered.

John Arrigo said his department hasn't looked for any particular agricultural problem. Most people check for bacteria or lead but there are a lot of different chemicals. The tests are expensive and the normal well owner doesn't check for different chemicals. The department doesn't have a regular program to do that.

Senator Keating said the department's emphasis is on source testing.

John Arrigo said there is some funding for testing. The department tries to identify the areas where there might be a problem.

Senator Keating asked if fees that are charged for registering and permitting, will the revenue go to the state.

Representative Giacometto said with the passage of this bill, there will have to be an amendment to HB 100 (the general government appropriation bill) to allow spending.

Closing by Sponsor: Representative Giacometto said chemicals have been detected in samples of water taken across the state. This bill has been brought in by the agriculture community working with the state departments. The water referred to in this bill is the

same water our children and livestock are drinking. He wants to make sure Montana's environment is protected and problems are not caused in the future.

The hearing is closed on HB 757.

HEARING ON HB 676

Presentation and Opening Statement by Sponsor:

Representative Bob Raney introduced this bill because firms who manage infectious waste outside Montana have discovered that Montana does not have laws or rules concerning infectious waste management or disposal. (Exhibit #6) Disposing of waste in Montana could be profitable for out-of-state firms.

After getting phone calls from people in his community Representative Raney set out to stop the importation of waste into Montana. He discovered this couldn't be done because garbage, including infectious waste, has commercial value and, therefore, falls under the federal interstate commerce laws. Anything Montana does along the line of infectious waste or solid waste management comes under interstate commerce laws. There is a provision in the bill that divides Montana into six waste regions and the seventh region is outside of Montana. By setting up regulations and mandatory management within these regions, the state can overcome the Interstate Commerce clause. This idea was modeled after the state of West Virginia, which has already successfully defended the waste regions before the courts. The purpose of the law is to set management standards for infectious waste. For the next two years crematories and mortuaries have been exempted from the bill. Representative Raney said the state will be looking at the way waste is generated, how it is contained and stored at the site, and how it is transported. This measure will require air quality permitting of any new incineration of waste. Representative Raney submitted amendments. (Exhibit #8)

List of Testifying Proponents and What Group they Represent:

Sue Winegartner, Montana Solid Waste
Marc Montgomery, Livingston Resident
Dan Porter, CAP
Stockton White, CAP
Chris Kaufman, Mont. Environmental Information Center.
Jim Ahern, Montana Hospital Association
Max Bauer, Browning Ferris Industries
Jim Leiter, Dept. of Health & Environmental Sciences

Roger Tippy, Montana Dental Association
Bonnie Tippy, Montana Funeral Directors
Roger Kiesling, Montana Dental Association
Martin Skinner, M.D., Montana Medical Association

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Sue Winegartner submitted a State Infectious Waste Regulatory Programs pamphlet. (Exhibit #7) Montana is only one of four states that does not have regulations on disposal of medical wastes.

Marc Montgomery said 13,000 residents of Livingston signed a petition saying they were against the burning of infectious Waste in Livingston's incinerator. The residents realized that they would not be able to ban burning of infectious waste because of interstate commerce laws. Mr. Montgomery thinks Representative Raney's bill should pass because there will be some regulation. The incinerator in Livingston does not have emission controls and, therefore, what is burned goes up the stack and out into the air.

Dan Porter surveyed people who live around the incinerator in Livingston. The incinerator is located in a residential section of town and people are very concerned about burning in the incinerator without emission controls.

Stockton White said it is very important for Montana to pass a law to stop infectious waste from being shipped in from other states. Mr. White doesn't want Montana and Livingston to become a dumping ground for other parts of the country.

Chris Kaufman said because so many states have regulations regarding waste disposal management, it encourages others to look at Montana as a place to dump their waste. It is possible that the management of waste could be a viable industry for Montana. If it is, the state needs to be prepared with regulations and have a department that has enough people to manage a program that could deal with disposal of infectious waste. One part of this bill is to get a handle on the stuff coming in from out of state and the other part is to begin to establish practices in Montana for those people who generate and dispose of infectious waste.

Jim Ahern said the hospital industry is primarily affected by this bill. The industry hasn't entered into the matter

lightly because of the public's perception of infectious waste. Mr. Ahern thinks the reality is not as bad as the perception. The fact is that most hospital wastes called "infectious waste" are probably no more hazardous than ordinary household garbage. Studies have proved that. Hospitals deal with very serious problems and with all types of infections, but specialists say that a lot of infection is taken care of just by exposure to air. The association first wanted to find out how many hospital have incinerators. He is very concerned about hospital and health care costs because no matter what regulatory system is set up, somebody has to pay for it, either the taxpayer or the hospitals. Mr. Ahern found out that hospitals have managed infectious waste for a long time. He found out through a survey that 14 hospitals do not have incinerators, so they will have to buy incinerators if there is a total landfill ban. The small hospitals in the state are in bad financial shape and it would be difficult for them to buy an incinerator. The hospital association has asked for an exemption for a couple of years and maybe at that time, the hospitals can come into compliance.

Max Bauer supported this bill. In Montana his firm has a little over 100 employees that handle this stuff every day. Infectious waste just doesn't belong in regular waste. His firm (Browning Ferris Industries) is also one of the largest medical waste handlers in world. His firm has been approached by a lot of facilities in Montana. But without rules it's hard to provide a service or provide adequate facilities. Until this type of legislation is in place you won't see anything provided for this type of waste. Finally, Mr. Bauer noted his firm has had pretty good response from people voluntarily wanting this medical waste handled in a satisfactory manner.

Jim Leiter said because Montana doesn't have infectious waste regulations these wastes are handled the same way as banana peels. Because Montana is one out of four states without regulations it is certainly an attractive option for people who are trying to avoid the high cost of disposing this kind of waste in other states.

Roger Tippy handed out amendments that the dentists want added to this bill. (Exhibit #9)

Dr. Roger Keisling agrees with many remarks stated previously and thinks Montana needs some regulations. He is very cautious about the section Mr. Tippy outlined because of the effects on everyday practice. In the past 10 years the dental environment has changed dramatically.

Bonnie Tippy said the Montana funeral directors could be

heavily impacted by this bill. The bill reads (on page 6) that "commercial facility means a nonprofit or for-profit facility that in return for consideration accepts infectious waste, other than that generated on its own premises, for treatment, storage, or disposal." Funeral directors accept human bodies in mortuaries for disposal of what could be termed an "infectious waste". These bodies sometimes come from out-of-state so funeral directors could be very heavily impacted by this bill. She would like the funeral directors to have a permanent exemption from this act.

Dr. Martin Skinner runs the disease control programs for Montana and Wyoming and also represents the Montana Medical Association. Practitioners of medicine would be impacted by the disposal of certain wastes from their offices. He uses hard containers for sharp objects. Other things that are potentially hazardous are disposed of in sealed bags. Dr. Skinner pointed out that from a public health standpoint, Montana needs something like this bill very much.

Questions From Committee Members:

Senator Noble asked what autoclaving means?

Jim Ahern answered it's a steam sterilization process to render instruments noninfectious, or it can be used to render infectious waste noninfectious.

Senator Noble asked why farmers and ranchers are excluded under this bill?

Representative Raney said they are not a commercial or non-commercial facility.

Senator Eck said she heard that one of the reasons hospital costs are so high is that everything is thrown away rather than washed. She wondered whether there would be a possibility of cutting down on the amount of waste by sterilizing it or are there other regulations that require that they get rid of this stuff?

Jim Ahern said a person in the hospital generates 10 to 15 pounds of waste material a day. A few years ago needles and syringes were sterilized. Now a lot of that goes into a landfill.

Senator VanValkenburg asked Representative Raney about his position in regard to the dentists' amendment?

Representative Raney said it's fine with him.

Senator Jenkins said it sounded like St. Peter's Hospital was throwing waste out of the back door.

Jim Leiter said the waste found outside the hospital was normal hospital waste, not infectious waste. The waste was probably put into a trash bag and dragged out by a dog or kid. The bag was torn open and strewn along the street.

Senator Story asked why mortuaries were exempted?

Representative Raney said in other states blood has to be contained and hauled off to a facility that treats sewage. In rural Montana this waste is just going out to the drain fields, which may or may not be proper. So instead of exempting them permanently, he thought they should come back next session and show why they should be exempted permanently.

Closing by Sponsor: Representative Raney closed by saying he definitely tried not to create any serious problems for Montana's medical community. However, this measure says that medical waste must be managed correctly.

HEARING ON HB 752

Presentation and Opening Statement by Sponsor:

Representative Raney sponsored this bill because he wanted to severely restrict the importation of garbage into Montana. All this bill currently does is put a \$1.00 fee on every ton of garbage imported into Montana that is not now under some form of contract. Currently, some garbage comes into Montana from Idaho. An air quality permit is also required for the burning of anything over 70 tons capacity per day.

Currently a Montanan or a Montana corporation can dispose of solid waste on his own property if he generates the waste. Under this bill, residents can continue to dispose of waste on their private property but that waste must have been generated in Montana. Any waste generated outside the state will be regulated.

List of Testifying Proponents and What Group they Represent:

Chris Kaufman, Montana Environmental Information Center
Kim Wilson, Sierra Club

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Chris Kaufman liked this bill better when it included more fees and regulated dumping in Montana. She thinks the bill is a start. The fees generated when waste comes in from out of state will get some money from out-of-state people and will help regulate the disposal of waste.

Kim Wilson supports this measure because it addresses some problems in Montana associated with the importation of waste. This bill is a timely response to that growing problem.

Questions From Committee Members: Senator Eck asked if this bill prohibits waste coming from another state, or does it just charge a fee?

Representative Raney said the fee will be \$1.00 a ton and, if large amounts are brought in, it will provide money for the department to employ a person to make sure that the importers comply with Montana's rules and regulations.

Senator Story expressed concern that the incinerator at Livingston should not accept any more out-of-state waste. He wants to have a moratorium in the bill until the new rules are in place.

Representative Raney said an infectious waste moratorium is in HB 676. Yellowstone Park currently sends refuse to Livingston. He doesn't want any new permits issued until the rules are in place.

Senator Keating asked the reason for the immediate effective date on this bill and HB 676.

Representative Raney said that was necessary to provide time to write the rules and regulations.

Closing by Sponsor: Representative Raney closed.

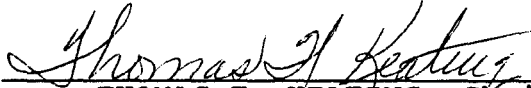
Hearing is closed on HB 752.

ADJOURNMENT

Adjournment At: 2:45 p.m.

April 5, 1989

Page 12 of 12



THOMAS F. KEATING, Chairman

TFK/hmc

senmin.405

NATURAL RESOURCES

COMMITTEE

50th LEGISLATIVE SESSION -- 1989Date 4-2-89

NAME	PRESENT	ABSENT	EXCUSED
Chairman Tom Keating	✓		
Vice-Chairman Larry Tveit	✓		
Senator Fred VanValkenburg	✓		
Senator Loren Jenkins	✓		
Senator Darryl Meyer		✓	
Senator Lawrence Stimatz	✓		
Senator Pete Story	✓		
Senator Bill Yellowtail		✓	
Senator Elmer Severson		✓	
Senator Cecil Weeding	✓		
Senator Dorothy Eck	✓		
Senator Jerry Noble	✓		

Each day attach to minutes.

ENRIT NO. #14-5-89

2507 Roberts

BILL NO. HB757

Helena, Mt. 59601

(406) 443-7487

Statement of
John Semple
Executive Secretary
Montana Aviation Trades Association

Before the
Natural Resources Committee
of the
Montana Senate
April 5, 1989

Mr. Chairman:

The Montana Aviation Trades Association (MATA) extends its sincere appreciation to you and the committee members for providing this association with an opportunity to make comment on H.B. 757, titled Ag Chemical Groundwater Protection Act.

During a normal year this Montana industry (Aerial Application) will apply seed, fertilizer, and crop protection chemicals to an acreage value in excess of 3,600,000 acres (30,000 acres each x 120 registered applicators, average). Some acreages will have repetitive applications, increasing the total of acreages treated. Precision and a high regard for safety are paramount, as agricultural aviation has the lowest accident and fatality record of any segment of general aviation. This is according to statistics compiled by the Federal Aviation Administration. We believe the industries' success in safety of flight transfers to pesticide use safety via our national association's (NAAA) operation SAFE program and ever improving state conducted certification and training programs.

On this basis and for the record, MATA supports HB 757. The concept of best management practices and/or specific area management plans allows for effective chemical crop protection along side groundwater protection.

1 of 2

The purpose of Montana Aviation Trades Association is to foster promote and protect the commercial aviation industry in the State of Montana



Ex. #1

4-5-89

2507 Roberts

Helena, Mt. 59601

(406) 443-7487

Specifically, mixing/loading sites and the possibilities of secondary confinement, two areas of great concern to aerial applicators, will cost the industry relatively large sums under this bill. This shows our willingness to help protect a vital natural resource, groundwater.

Other areas of the act, including monitoring, research, education, groundwater classification and standards provide for a common sense approach to management of agricultural chemicals to prevent their entry into groundwater. The programs in this bill will be supported scientifically, including the determination of sample validity, the methods of analysis, and the use histories of the chemicals in question. This permits an interpretation of the significance of positive detections to human health by considering both the degree and extent of contamination and the risks of exposure, on a case-by-case basis. Using numerical standards, as developed by EPA and Health at the federal level, provides a mechanism for local health and regulatory officials to inform the public.

MATA agrees with the purposes of this bill, that being to protect groundwater, and to provide for education and management practices. To allow for the proper use of agricultural chemicals, which are valuable and necessary tools for agricultural production and disease control, assures our industry of reasonable operating parameters. This ultimately translates into an affordable, plentiful, and nourishing food supply.

MATA thanks the chairman and the committee members for your interest in our comments regarding HB 757. Rather than taking valuable time from you with additional testimony, I am available for answers to any specific questions the committee may have about aerial application, MATA, and HB 757.

Langley

HB 757 "MONTANA AGRICULTURAL CHEMICAL GROUNDWATER PROTECTION ACT"

1. HB757 is based on EPA's "Agricultural Chemicals in Groundwater: Proposed Pesticide Strategy." The basis of the strategy:
 - +States should have primary role. The management plan strategies should be developed at the state level.
 - +Federal role should be development of health-based standards as well as technical assistance to the states.
 - +Differential protection with the groundwater classification system developed by the states.
 - +Emphasis on prevention as opposed to correction--due to the cost and technology required for cleanup.
2. HB757 fits EPA strategy into existing Montana Water Quality Act
 - +HB757 is tailored to compliance with the Water Quality Act. The reasonable land, soil and conservation practices provided for in the Water Quality Act are defined as the specific ag chemical management plans promulgated by rule [Section 13]
 - +HB757 provides that the standards dictated by the Water Quality Act be the federal health-based standards (MCL's or health advisories) established by EPA, except when no standard exists or EPA has not considered new data. This is current DHES practice. [Section 9]
 - +Emphasis in both EPA strategy and Water Quality Act is prevention--and HB757 provides same emphasis. Prevention is through education and general management plans. [Sections 9 and 12]
3. HB757 has been developed over past year in close consultation with the Montana Department of Agriculture and Montana Department of Health and Environmental Sciences.
 - +Goal is a groundwater protection program that will work.
 - +Laws in other states were examined and aspects from several states incorporated in HB757.
 - +Expertise of both departments went into drafting HB757 and result is a program where each has its appropriate roles while jointly administering the program.
4. HB757 is revenue neutral for the State of Montana
 - +Revenue comes from an increase in the registrant fees paid by companies to register products in the state.
5. HB757 is now a consensus bill supported by both the major agricultural groups and environmentalists.
 - +Ag groups supported HB757 while environmentalists opposed it in the House Natural Resources hearing.
 - +After nine hours of scrutiny and amendments in subcommittee, HB757 opponents agreed to support it; major ag groups remain in support--Montana Grain Growers, Montana Farmers Union, Montana Farm Bureau.
 - +HB757 passed the House 96-1 on second reading and 97-2 on third reading.

MONTANA DEPARTMENT OF AGRICULTURE

Snortland

TESTIMONY
ON
HOUSE BILL 757

SENATE NATURAL RESOURCES COMMITTEE
Wednesday April 5, 1989

Chairman, Senator Tom Keating:

House Bill 757 establishes the basic foundation to develop a sound and realistic program to prevent the introduction of agricultural chemicals into Montana's groundwater. The bill as structured establishes cooperative educational and preventive programs to protect groundwater. It also establishes various compliance mechanisms to minimize or prevent further introduction of an agricultural chemical into groundwater.

The bill also establishes how state agencies and the university system would work together to maximize expertise and programs in carrying out the responsibilities required in this bill. The issues associated with agricultural chemicals and groundwater, chemicals, soils, climate, geology and water, requires the cooperation and knowledge of various state agencies, the university and federal agencies. This act will require active participation of the public when management plans, educational programs and related activities are being developed, implemented and evaluated.

This bill will allow Montana to plan and develop a sound program to address groundwater contamination, instead of reacting to a crises situation when human health, agricultural crops, livestock or the environment are threatened or damaged. We will require technical and financial assistance from EPA to carry out the duties of the bill. It is my current understanding that beginning in fiscal year 1990 EPA will have some funds to assist states in developing and implementing groundwater programs.

The farmers and ranchers of this state would normally be the first individuals impacted by chemicals in groundwater, therefore it is in their best interest to implement preventive measures to protect their drinking water and water used for crop and livestock production. The general public also has the responsibility to properly use and dispose of chemicals used around and in their homes.

The bill provides the basic framework for Montana to develop a realistic program in the 1990's which may have to be revisited in terms of the program and funding as we learn more about agricultural chemicals and groundwater.

Testimony of the Montana Grain Growers Association 4-5-89

on HB757

BILL NO. HB 757

Merja

Mr. Chairman, members of the committee, my name is Charles Merja. I am a small grains producer from Sun River and the Secretary of the Montana Grain Growers Association. We support HB757, the Montana Agricultural Chemical Ground Water Protection Act. It is a practical and responsible solution to maintaining the quality of our water in Montana.

The bill is an effort by farmers, the chemical industry, applicators, environmental concerns, and regulatory agencies, to come to grips with the problem or potential problem of groundwater contamination.

As farmers, we have a great deal at stake in seeing that ground water contamination is prevented. Water is an extremely important asset to agriculture. We want to protect that asset for us and future generations. We do not want to use chemicals nor do we want to apply chemicals in a way that will endanger our water.

The chemicals we use in agriculture are also very important to us. They provide us with protection against weeds and insects that would otherwise devastate Montana crops. We want to protect our right to use those chemicals until we have other tools to replace them. We can only protect that right by being responsible in our use of chemicals. We cannot use chemicals that will harm our ground water. We cannot apply chemicals in ways that are dangerous to our environment. This bill will help us determine any chemicals or application methods or practices that are not safe.

EX #4
4-5-89
PS.2

The past few weeks, ag chemicals have dominated the news. Alar on apples and cyanide in grapes have turned the U.S. food industry upside down. While the U.S. has a food supply that is the envy of the world in quality and quantity, consumers have many concerns about the use of chemicals in the production and preservation of our food. We need to continually improve upon our system of regulating and monitoring pesticide use in agriculture so that these concerns and fears are satisfied. It is important for our industry to adopt standards and procedures that protect our environment. We in agriculture are proud of our food products and do not want front page coverage in Time and Newsweek for the wrong reason.

This bill will help keep Montana agriculture off the "front page". It will give farmers and other pesticide users, applicators, chemical companies, and the State of Montana the standards to protect our groundwater -- to determine if and when chemicals are detected in groundwater and a way to correct any conditions that are causing contamination.

We urge the passage of this legislation.



SENATE NATURAL RESOURCES

EXHIBIT NO. # 5
MONTANA FARM BUREAU FEDERATION 4-5-89
502 South 19th • Bozeman, Montana 59715
Phone: (406) 587-3153
LL NO. HB 757

BILL # HB 757 ; TESTIMONY BY: ~~Valerie Larson~~ Lorna Frank
DATE April 5, 1989 ; SUPPORT support ; OPPOSE _____

Mr. Chairman, members of the committee, for the record, my name is Lorna Frank
~~Valerie Larson~~, representing 3600 Farm Bureau members from throughout Montana.

Montana Farm Bureau has been involved with House Bill 757 since last fall. This bill is needed to protect our groundwater. It addresses monitoring, proper use of agricultural chemicals, sets ground water standards, and groundwater management plans.

We especially like the dual administrative authority between the Department of Health and Environmental Sciences and the Department of Agriculture.

This bill provides penalties for violators, and it protects those who follow label directions and ground water management plans.

This bill also provides education and training programs for the applicators and the general public. Farm Bureau has also implemented its' own educational program in conjunction with Dr. James Bauder, Extension Specialist with the Cooperative Extension Service. We are publishing articles written by Dr. Bauder about groundwater and it's protection in our monthly paper. We intend to put these articles in a book for later reference.

House Bill 757 sets up guidelines on a program that is needed now and in the future.

Farm Bureau supports House Bill 757 and urges this committee to concur as presented by the sponsor.

Thank you for your attention

SIGNED: Lorna Frank

DATE 4-5-89HOUSE BILL 676 -- INFECTIOUS WASTE MANAGEMENT ACT HB 676

(THIRD READING COPY PLUS SPONSOR'S AMENDMENTS)

Raney

April 5, 1989

HOW THE BILL AFFECTS MONTANANS

All persons involved in infectious waste management will have to label, treat, store, transport, and dispose of infectious waste according to regulations similar to those governing infectious waste management in almost all other states. The Montana rules will not go into effect until July 1, 1990.

New commercial incinerators of infectious waste will have to obtain a permit, meet stringent air quality requirements, and pay a \$10,000 fee, plus 25 cents per pound of infectious waste incinerated. Existing operations (Livingston is the only commercial incinerator in Montana) are subject to a \$2,000 annual fee.

Other new commercial disposal facilities will be subject to a permit and a \$2,000 or \$5,000 annual fee, depending on the volume of infectious waste managed. No additional importation of infectious waste into Montana can occur until the state has its infectious waste management rules in place.

Large and medium-sized hospitals can continue to use on-site incinerators and autoclaves for disposal of infectious waste. After July 1, 1990, these hospitals will not be able to dispose of untreated infectious waste in landfills. Large hospitals (generating more than 5,000 pounds of infectious waste annually) will be subject to a \$2,000 annual fee; medium-sized hospitals (generating between 2,000 and 5,000 pounds) will be subject to a \$250 annual fee.

Small hospitals and medical clinics can continue to dispose of infectious waste through incineration, autoclaving, or at landfills according to current practice.

Doctors' and dentists' offices will be subject to existing federal OSHA guidelines for storing and transporting infectious waste and can dispose of their infectious waste at landfills until at least July 1, 1991.

Landfill operators and sanitation workers will now know when they are receiving infectious waste and will be able to take appropriate precautions for handling, location of disposal, and protection of the public from contact with the infectious wastes. Garbage haulers will also be protected from direct contact with infectious waste and from the kinds of injuries that have occurred in Montana when medical "sharps" have been improperly contained.

~~SENATE~~
SENATE NATURAL RESOURCES

EXHIBIT NO. 7 PS 10/16

DATE 4-5-89

BILL NO. HB 676

State Infectious Waste Regulatory Programs

The
Council of
State
Governments



Foreword

The Council of State Governments is pleased to release *State Infectious Waste Regulatory Programs*. This report analyzes the results of a CSG 50-state survey which documents a dramatic change in state regulatory priorities in the area of infectious waste disposal. Overall, this report demonstrates the Council's ongoing commitment to becoming the integrated, regionally-based, national organization dedicated to delivering quality, value-added products and services.

Carl W. Stenberg
Executive Director

This report is a product of The Council of State Governments, Carl W. Stenberg, Executive Director. The Project Manager for this report is R. Steven Brown, Director of the Center for the Environment and Natural Resources, The Council of State Governments. The author is Sue Markland Moreland, President of The Markland Group, with the very able assistance of Andrew Hinson.

The information presented in this report was compiled through the use of a written questionnaire and followup telephone survey. The purpose of the report is to identify trends in a fast moving regulatory field. To find out the specific requirements of a state, the appropriate state agency should be contacted.

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C-108. Price \$20.00, \$14.00 for state officials.

STATE INFECTIOUS WASTE REGULATORY PROGRAMS

Heightened public awareness of AIDS and its transmission by blood, blood products or bodily fluids has raised the question of how infectious wastes are regulated by this nation's waste management programs. In January, 1988, the press reported solid waste haulers in Texas refused to handle designer garbage bags retailed by Neiman Marcus because these bags were red — the color used by hospitals for the disposal of infectious wastes. Other national press reported children playing with discarded needles found in an Indiana clinic's dumpster and hospital wastes washing up on the New Jersey shore. These events have served to focus public interest in this long-ignored portion of the solid waste stream.

No one can doubt that public demand for governmental attention to the generation, handling and disposal of infectious waste has changed dramatically in the last two years. State governments have proved to be the most responsive to this new environmental issue.

In most previous environmental regulatory programs, the federal government established baseline programs which state governments were expected to emulate. Infectious waste regulatory programs, however, are being created by state governments, which have taken the initiative. With no federal statutes or regulations to guide them and no federal money to support the creation of a new environmental regulatory program, states, regardless of size or location, are in the process of meeting the public's demand for protection. It is this clear state-generated initiative that this report describes.

In 1976, the Resource Conservation and Recovery Act (RCRA) defined hazardous waste to be a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or *infectious characteristics* may cause [illness or pose substantial present or potential hazard to human health and the environment]. In 1978, the U.S. Environmental Protection Agency proposed its first set of hazardous regulations. A definition of and treatment methods for infectious wastes were included in the Agency's proposal. However, when the final rule was published on May 19, 1980, the Agency stated in the preamble that infectious waste regulations would be published when RCRA work on treatment, storage, and disposal standards was completed. Eight years and two reauthorizations of RCRA later, still no federal regulations have been promulgated.

With no federal baseline and no federal funds to develop state regulatory programs, state governments were slow to initiate a new regulatory program in a field overlooked by the public. When USEPA completed its final *Manual for Infectious Waste Management* in May of 1986, 28 states had no regulatory structure addressing infectious wastes.

This report analyzes the results of a Council of State Governments survey completed February 1, 1988, which documents a dramatic change in state regulatory agency priorities. A total of 50 states and the District of Columbia responded to CSG's survey either in writing or by telephone interview. Eight states (AR, FL, KY, MO, NJ, OK, IN, WA) provided responses from both their solid waste offices and their health departments. Of those states responding, 31 surveys were completed by the solid waste programs; while 11 states plus the District of Columbia submitted information from their health departments (usually the division responsible for licensing health care facilities). The responding state agencies follow:

"... children playing with discarded needles, and hospital wastes washing up on the shore have served to form public interest in this long ignored portion of the solid waste stream."

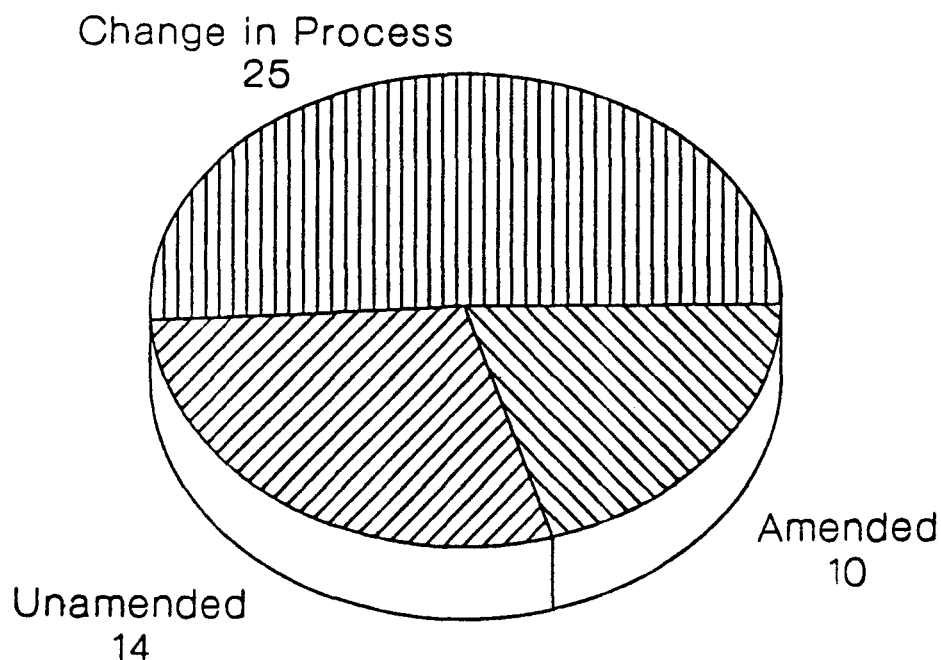
STATE AGENCIES RESPONDING

Solid Waste		Health Dept	Both
AL	NE	AZ	AR
AK	NH	CO	FL
CA	NM	HA	KY
CN	NY	MD	MO
DE	NC	MA	NJ
GA	OH	MS	OK
ID	OR	NV	TN
IL	PA	ND	
IN	SC	RI	
IO	SD	TX	
KS	UT	WV	
LA	VT		
ME	VA		
MI	WA		
MN	WS		
MT	WY		

A majority of states will be regulating infectious wastes in the near future.

In eleven states, new or amended infectious wastes statutes or regulations have been promulgated since USEPA published its 1986 Guidance. In addition to those states which have completed the passage of new laws or the promulgation of new regulations, 25 states have initiated processes that could result in changes to their requirements for infectious waste handling, transportation and disposal (Figure 1). Of these twenty-five, six states (ME, MA, MN, MO, NY, VT) are on the second round of modifications since the EPA guidance.

Figure 1
Changes in State Infectious Waste Regulations Since 1985



At this time only 11 states and the District of Columbia answer "No" to the question "Does your state regulate infectious wastes?" Of those eleven, only six (AL, MI, MT, NV, ND, WY) have no immediate plans to expand their regulations to include infectious waste. In summary, 88% of the states, compared to 57% of the states in 1986, are or will soon be regulating infectious wastes.

This push for change is nationwide in scope.

Large and small states are responding to both internal professional advice and public demand (Figure 1). Unlike usual regional upgrading efforts in environmental management, such as the recent interest of Northeastern states in ash disposal, the regulation of infectious waste has been led by diverse states (Pennsylvania, Tennessee, Missouri, Rhode Island, Virginia) scattered throughout the country.

The change is only beginning.

The status of this change is important. Citizen interest in a new regulatory initiative expresses itself in new state laws or in amended regulations to existing programs. To develop new regulatory initiatives a prescribed set of steps must occur. To pass a new state law requires time . . . although in some states, such as New York, the time from introduction of a legislative initiative addressing infectious waste regulation to final implementation can be quite fast. The NY state infectious waste legislation was introduced in the spring of 1987 and signed into law in early fall. The first round of rules are to be in place by early 1988. Introduction of bills, hearings, negotiations and final signature by the governor requires an entire legislative session in most states. In some states, particularly in the South, the legislature meets for only three to four months and only every other year. This schedule discourages rapid change.

Amendments to existing state "protection of public health and safety" directives also require time for the regulatory agency to review existing requirements, identify other states where more stringent requirements have been adopted, and to work with the public and the potential regulated community as drafts work their way into the state's Code.

Yet in spite of the need to follow a defined number of steps mandated by legislative process and state Administrative Procedure Acts, the change in states' infectious waste programs demonstrates a rapid response by states to a recent public demand. In the last two years, the public has become aware of potential risks from pathologic wastes and in the last year state health and environmental agencies have started the process of improving their infectious waste regulatory structure.

Of those 25 states in the process of change, 66% are discussing internal drafts and 27% have introduced a proposed rule (Figure 2). To identify the progress of each state in this new regulation development, the CSG survey provided six alternative stages — internal discussions or drafts, draft for external review, public information meetings, proposed rule, public hearings on the proposed rule, and new rule being printed — for those who had answered positively to an earlier question on whether their state was in the process of change. The concentration of states at the internal draft stage demonstrates the newness of the states' efforts.

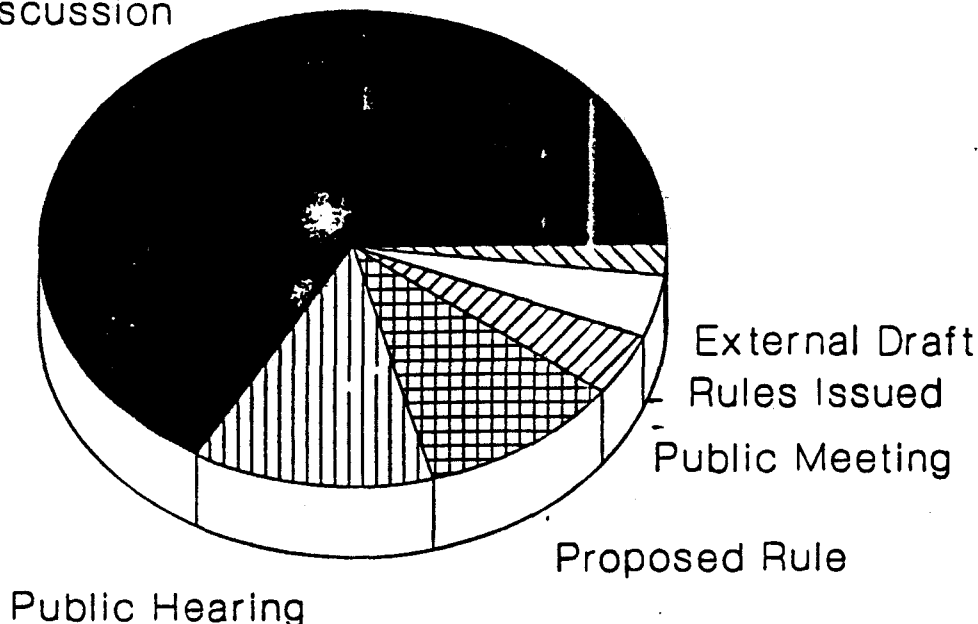
Evolving regulation is split between state environmental and public health agencies.

Infectious waste programs are not easily pigeon-holed in existing state regulatory structures. The CSG survey confirmed results in the 1986 USEPA Guidance which noted split jurisdiction in 11 states. The

"In 1988, 88% of the states, compared to 57% of the states in 1986, are or will soon be regulating infectious wastes."

Figure 2
Stages of State Changes

Draft/Discussion



Public Hearing

lead agencies are either the solid waste management authority or the hospital licensure bureau or both. When asked which agency had the enforcement lead, most states responded that the solid waste office covered the off-site disposal of the waste, the air control board handled incinerators, and the hospital licensure office monitored on-site generation, treatment, and disposal of infectious wastes. In a dozen states, enforcement was delegated by the state health department of either the county health departments (7) or to the Joint Commission on Accreditation of Healthcare Organizations (5).

Access for inspections divided between state agencies.

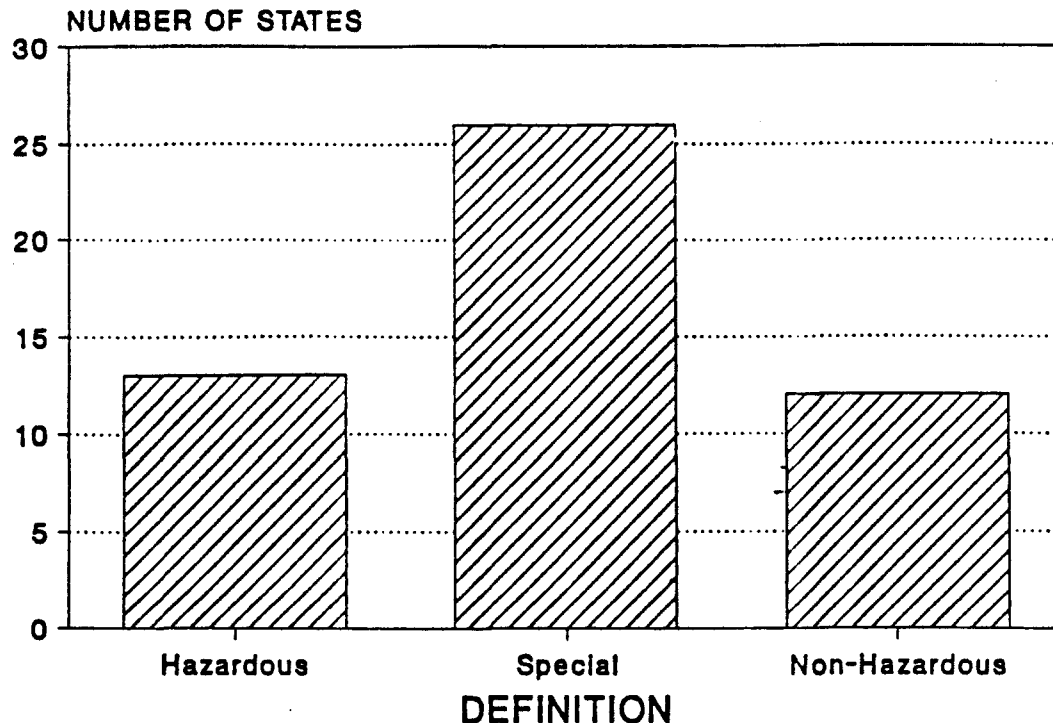
Inspections of off-site treatment and disposal facilities and on-site storage operations mesh well with the other responsibilities of the state's solid waste department. Stack emissions from incineration are regulated by the state's air office. Yet on-site generation and handling of infectious waste usually occurs in health care facilities where the state Health Department maintains jurisdiction.

Because of this division in inspection responsibilities between two state agencies, there is question whether adequate cradle to grave monitoring can occur. The programs are still too new to identify any problems with enforcement.

Enforcement responsibilities are dependent on the lead agency.

Those programs under the offices of solid waste vary widely in enforcement strategies. For example, penalties for non-compliance range from civil fines of 0-\$500/offense (NM) to criminal penalties of \$50,000/offense or 20 years in jail (PA).

Figure 3
State Infectious Waste Definition



Programs located in the facilities licensure divisions of state health departments rely on licensure suspension as their primary enforcement tool. Health care facilities are expected to comply with guidelines covering best management practices to maintain their licenses. For that reason, guidelines in the infectious waste regulatory field could prove to be potent directives, though guidances, unlike regulations, do not have the power of law and can not be directly enforced.

Infectious Waste can be classified three different ways.

This waste stream was originally part of a state's hazardous waste program because wastes with infectious characteristics are included in USEPA's definition of hazardous wastes. In order to receive delegation for the federal hazardous waste program, states are required to adopt a regulatory program no less stringent than the federal government's. For that reason, the states initially incorporated USEPA's inclusion of infectious waste in their definition.

The current trend, however, is to delete infectious wastes from the states' hazardous waste programs and to create either a special wastes category or to include these wastes under the state's non-hazardous waste regulations (Figure 3).

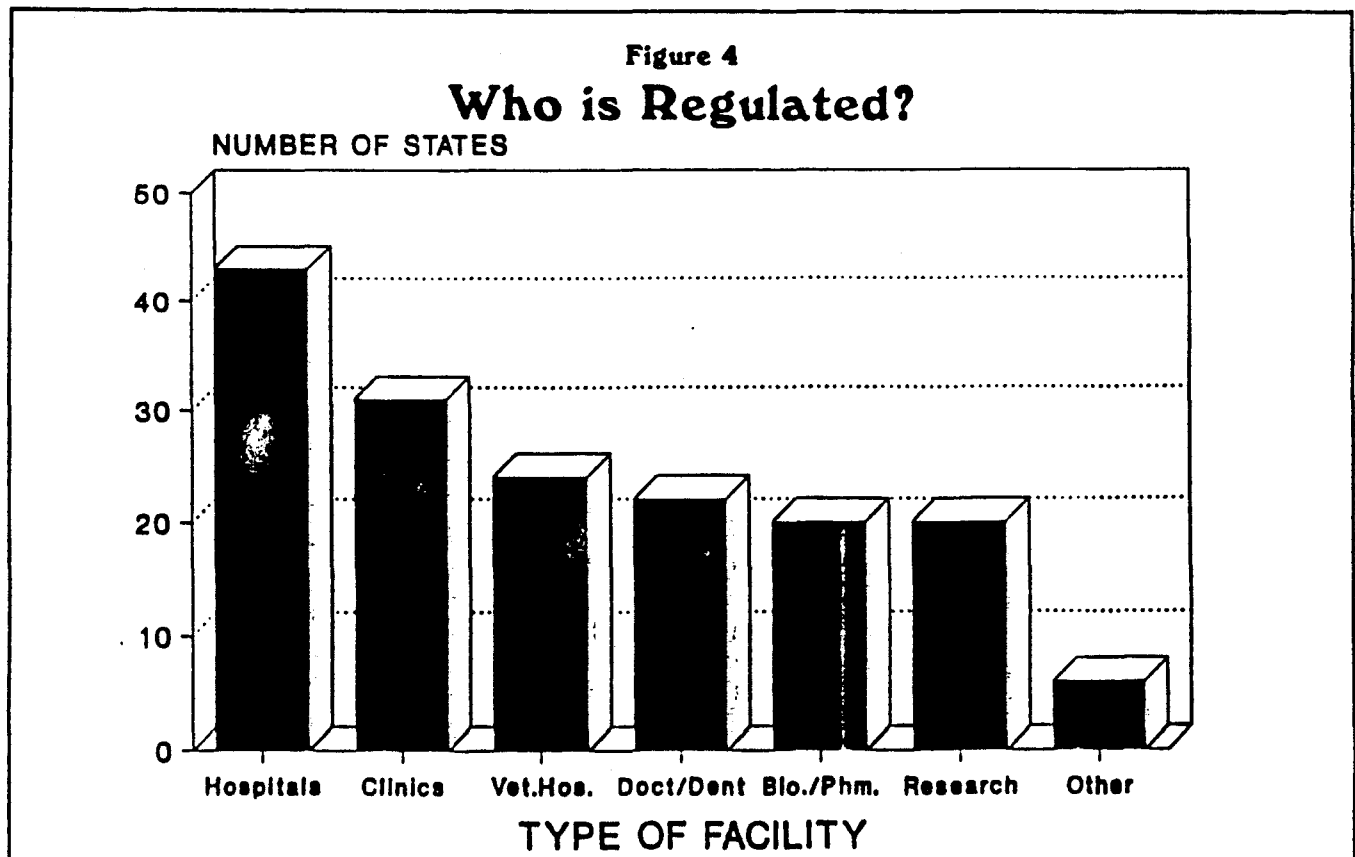
When states were asked why they had elected to regulate infectious wastes as special wastes instead of hazardous wastes, the most common answer focused on the difficulty in delisting a hazardous waste after it had been treated. Hazardous wastes, when treated, must be submitted to a rule making (or delisting) before the wastes are considered non-hazardous. This is a cumbersome, time consuming and case-by-case procedure which potentially applies to any generator or disposer who treats (incinerates, autoclaves, disinfects, etc.) infectious waste either on- or off-site.

Many of the states' infectious waste regulations emphasize treatment that sterilizes the waste. For example, New Jersey's hospital licensure requirements state that "infectious waste must be rendered non-infectious at the point of origin." Since treatment of infectious waste (based on best management practices guidelines) renders the waste non-infectious (no longer hazardous under the EPA definition), most state agencies are proposing to handle the treated waste as non-hazardous. Seventy-five percent of the states surveyed included infectious waste under special or non-hazardous waste programs. In USEPA's 1986 guidance, fifty-three percent of the states listed their hazardous waste program as the primary framework for dealing with infectious wastes.

The majority of states identify hospitals as the target generator for regulation.

State programs, both in place and under development, focus on hospitals as the primary generator of infectious wastes. Three-quarters of those states that cover hospitals also include clinics as generators (Figure 4). Doctors and dentists offices, along with animal care facilities, were addressed by approximately half of the states that listed hospitals as generators.

The choice of defining the regulated universe by characteristic or by listing, or in a few cases, by a combination of the two, dictates the scope of generators covered. In those states which use or are considering the use of characteristics to define infectious wastes, all potential generators would be regulated unless expressly exempted. In contrast, states which rely on listing can more easily specify wastes from specific generators (pathological wastes from hospitals, blood and blood products discharged by dialysis units).



Basing regulations on the class of generator, rather than the characteristics of the waste, can lead to some odd incongruities. For example, under Rhode Island's new regulations, wastes from animal research undertaken in a hospital may be regulated as infectious; but the same wastes generated at a university unaffiliated with a hospital would not be covered.

Emphasis on hospitals as generators may simply reflect anticipated volume. Five states, California, Indiana, Minnesota, Missouri, and Ohio, propose to or are currently recognizing small quantity generators as exempt from the state's policies or rules for infectious wastes. Nebraska has a unique statewide policy to exempt small townships from regulation.

Enforcement discretion may play a part in how this question was addressed. Law makers and the public have ranked risk from each of these sources differently, as evidenced by specific referrals to hospitals. Alabama and New Hampshire, for example, require incineration only of hospital infectious waste.

A third possibility is that this data may only reflect regulatory emphasis on hospitals (generators) for on-site handling of infectious wastes and a shift to monitoring the off-site treatment centers (TSDFs) for coverage of waste generated by offices and research centers.

Specifics of state changes demonstrate trend.

- Most states attempt to define infectious waste in their regulations (Table 1). Similar to hazardous waste regulation, states follow two approaches in defining the wastes covered by their infectious waste regulations. Some states utilize a definition based on the characteristics of infectious waste (an etiological agent of human illness), while some list wastes that are considered to be infectious (isolation wastes, cultures of organisms, blood and blood products, pathological wastes, etc). In the latter case, the majority have relied on USEPA's list in the Agency's Infectious Waste Guidance to define their program's universe.
- Permits are not the choice of infectious waste regulators. When they are required, the permit is issued by the state's environmental agency (either to the solid waste or air program or to both) and usually applies to an off-site disposal facility. Table 2 shows which states answered CSG's survey affirmatively about permits. There may be other states that require treatment, storage, or disposal (TSD) permits under their air, hazardous and solid waste laws which could apply to infectious wastes. For example, the District of Columbia, Hawaii, Iowa, Kentucky, Maine, and Washington regulate infectious wastes as hazardous wastes. In these states' hazardous waste programs TSD permits may be required.
- On-site handling of infectious wastes is usually governed by state health department guidances. The Joint Commission for Accreditation of Healthcare Organizations, the Center for Disease Control, the U.S. Environmental Protection Agency, the Occupational Safety and Health Administration, and the National Institutes of Health periodically issue recommendations for biosafety that have been used by state health departments to develop these guidances.
- Thirty-one states single out packaging/labeling requirements to be included in their infectious waste rules (Table 3). Packaging is a key to minimizing waste generator and handler exposure. Rigid containers, double bagging, and labeling requirements are elements that are already required in 14 states and may be required in 17 additional states (Table 3).

In the last year, waste haulers (and their associations) have focused on the protection from SHARPS as the key infectious waste issue in their industry. Changes in the state programs reflect this worker safety issue by recognizing the need for containing needles, scalpels,

"Permits are not the choice of infectious waste regulators."

and broken glass contaminated with pathogens in unbreakable, puncture-proof vessels.

- Storage facility specifications, including the length of time wastes can be maintained on-site, are likely improvements as states modify their programs. Seven states (CA, MA, NH, OR, PA, RI, TN) currently have specific storage requirements for infectious wastes. Twice that many are considering including such elements in their upgraded regulations (Table 3).

- Transportation and record keeping requirements have been included or are being examined by 3/5 of the states. These include designating non-compacting trucks as the only acceptable transport vehicle, requiring labeling of the transport truck, delineating procedures to clean the vehicle after use and specifying types of shipping papers required. If reports are addressed, the trend is to require the generator to maintain records on-site, not to submit manifests to the state regulatory agencies.

- A clear majority (72%) name incineration as a recommended treatment under existing or proposed regulations (Table 4). In a handful of states (AL, AK, CO, NH, TN) incineration is required. Of those states that recommend incineration, 23 are considering establishing performance standards. State air control agencies may have standards set that are not specific for infectious waste feedstocks, but still cover the incinerator's performance.

When asked about recommended methods for treatment and disposal, 56% of those responding have already, or are considering, requiring pretreatment before land disposal (Table 5). As was mentioned earlier, many states no longer define waste as infectious once appropriate treatment has been done.

Twenty-seven states, or 53%, recommend steam sterilization for treatment of infectious wastes. Fourteen of the 27 states specify or are considering specifying, time/temperature/pressure standards.

Eighteen states include chemical treatment as an alternative. Other states approve methods of treatment on a case-by-case basis.

- Under some conditions, at least twelve states allow land disposal of infectious waste without treatment.

- Unlike state hazardous waste laws, three requirements are not included routinely in a state's upgrading of its infectious waste program: requirements for contingency plans/spill management, closures, and financial assurances.

Contingency plans contain actions that should be undertaken when a spill of an infectious waste occurs. For example in the state's 11-2-87 external draft, Virginia has effectively taken the responsibility of producing a contingency plan that would apply to spills regardless of location. Virginia's spill management section specifies that all infectious waste management facilities are required to keep "a spill containment and cleanup kit within one hundred feet of any area where infectious wastes are managed," delineates the contents of the kit and lists containment and clean up procedures. Other states such as California may direct the generator to write a contingency plan for the state agency's review.

Closure requirements apply to that period when wastes are no longer accepted and the facility is in the process of decontaminating and ultimately shutting down the operation. Post closure (applies to disposal facilities) covers a specified number of years after closure when owners/operators must maintain and monitor the site. Six states (AR, CA, NH, OK, PA, TN, TX, WS) listed closure requirements in their infectious waste regulations.

Financial assurances provide that owners/operators must be fiscally responsible for closing a facility, for rendering post closure care at disposal facilities, and for compensating third parties for bodily injury and property damage caused by sudden and non-sudden accidents related to the facilities operation. Financial requirements include both assurances for adequate funding for closure/post closure and liability

coverage for injury and property damage. Only four states (CA, OK, PA, WS) listed financial assurance requirements in place. Eight additional states are considering including such requirements in their updated programs.

In summary, the trend is clear. Regardless of federal activity in this new field, states have decided to address infectious wastes. These new state regulatory programs are unique in their jurisdictional overlap between state environmental agencies and health departments. Moreover, because of limited staff and money, the evolving regulations are designed to be self-enforcing. Best management practices (emphasizing biosafety), liability issues, and haulers' refusals to handle red-bagged wastes are recognized and depended upon as strong voluntary compliance inducements. □

Recent Legislative Actions

During the current (January-March 1988) sessions of state legislatures, many infectious waste bills have been introduced. The following list is a summary of some of these bills. The list is not comprehensive, and does not necessarily portray the final resolution of the bill. It does, however, give an indication of some of the current state activity.

State	Bill
SC	Imposes a tax on the incineration and disposition of infectious wastes. Introduced 2-3-88.
RI	Solid waste management and infectious waste. Introduced 2-24-88.
NJ	Provides for regulation of infectious waste. Introduced 2-22-88.
NY	Requires prior notice of increase in infectious waste treated, stored, or disposed of at a state-owned facility. Introduced 3-9-88.
MD	Requires creation of a Task Force to study aspects of infectious wastes. Introduced 2-26-88.
MA	Authorizes study of infectious waste laws.
MO	Infectious waste regulation changes and additions (several bills).
NJ	Establishes manifest system and liability for medical wastes. Introduced 1-12-88.
TN	Enacts "Infectious Waste Disposal Act." Introduced 2-2-88.
NJ	Provides for regulation of infectious waste. Introduced 3-21-88.

Data supplied courtesy of the American Paper Institute, Inc.

Table 1
Infectious Waste Definitions

State	Defines Infectious Waste	Lists Isolated Wastes	Cultures of Organisms	Blood/ Blood Products	Patho- logical Wastes	Sharps (Needles, etc.)	Animal Carcasses	Other
ALABAMA								
ALASKA	R				R			
ARIZONA								
ARKANSAS	R	R	R	R	R	R		
CALIFORNIA	R	R	R	R	R	R	R	R
COLORADO	U	U	U	U	U	U	U	
CONNECTICUT	U	U	U	U	U	U	U	U
DELAWARE	U	U	U	U	U	U	U	
D.C.	U						U	
FLORIDA	R	R	R	R	R	R	U	
GEORGIA								
HAWAII								
IDAHO								
ILLINOIS	R	R	R	R	R	R	R	R
INDIANA	U	U		U	U	U	U	
IOWA								
KANSAS	R		R	R	R	R	R	
KENTUCKY	R	R	R	R	R	R	R	
LOUISIANA	R	U	U	U	U	U	U	
MAINE	U	U	U	U	U	U	U	
MARYLAND	R	R	R	R	R	R	U	
MASSACHUSETTS	R							
MICHIGAN								
MINNESOTA	R	R	R		R	U		R
MISSISSIPPI								
MISSOURI (1)	U*	U*	U*	U*	U*	U*	U*	
MONTANA								
NEBRASKA	R	R	U	U	U	U	U	
NEVADA			R	R		R		R
NEW HAMPSHIRE	R	R	R	R	R	R	R	R
NEW JERSEY	R	U	R	U	R	R	U	
NEW MEXICO	U	U	U	U	U	U	U	
NEW YORK	U	U	U	U	U	U	U	U
NORTH CAROLINA	R		R	R	R			R
NORTH DAKOTA	U	U	R	U	U	R		
OHIO	U	U	U	U	U	U	U	
OKLAHOMA								
OREGON	U		U	U	U	U	U	U
PENNSYLVANIA	R	R	R	R	R	R	R	
RHODE ISLAND		R	R	R	R	R	R	
SOUTH CAROLINA	U	U	U	U	U	U	U	
SOUTH DAKOTA								
TENNESSEE	R	R	R	R	R	R	R	
TEXAS	R		U	U	U	U	U	
UTAH (2)								
VERMONT	R							
VIRGINIA	U	U	U	U	U	U	U	U
WASHINGTON								
WEST VIRGINIA	U	U	U	U	U	U	U	U
WISCONSIN	U							
WYOMING								

NOTES:

(1) Regulations scheduled to be published 3/25/88 will change these "U"'s to "R"'s.

(2) Legislation passed on February 24, 1988, authorizes a Statutory Committee to develop regulations.

KEY TO TABLE

R = Regulation in place

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Blank = Not regulated by state and not under consideration.

Table 2
Activities Requiring Permits

State	Requires Permit For:	Treatment	Storage	Transport	Disposal	Emergency	Research and/or Development
ALABAMA							
ALASKA							
ARIZONA							
ARKANSAS							
CALIFORNIA		R	R	R	R		
COLORADO		U	U	U		U	U
CONNECTICUT		U	U	U	U		
DELAWARE		U	U	U	U		
D.C.							
FLORIDA (1)				U			
GEORGIA							
HAWAII							
IDAHO							
ILLINOIS				R	R		
INDIANA			U	U			
IOWA							
KANSAS					R		
KENTUCKY							
LOUISIANA		U	U	U	U	U	U
MAINE		U	U	U	U		
MARYLAND							
MASSACHUSETTS		R	R	R	R	U	U
MICHIGAN							
MINNESOTA							
MISSISSIPPI							
MISSOURI (2)		U	U	U*	U		
MONTANA							
NEBRASKA					R		
NEVADA							
NEW HAMPSHIRE		R	R		R		
NEW JERSEY		U	U	U	R	U	U
NEW MEXICO				U	U		
NEW YORK		R	R	R	R		
NORTH CAROLINA		R			R		
NORTH DAKOTA							
OHIO		U			U		U
OKLAHOMA		R	R		R		
OREGON							
PENNSYLVANIA		R			R		R
RHODE ISLAND			R	R	R		
SOUTH CAROLINA		U	U	U	U		
SOUTH DAKOTA							
TENNESSEE		R	R	R	R	R	
TEXAS					U		
UTAH							
VERMONT			R	R	R		
VIRGINIA		U	U	U	U	U	U
WASHINGTON							
WEST VIRGINIA							
WISCONSIN					R		
WYOMING							

NOTES

(1) Florida requires incinerator permits for infectious wastes.

(2) In addition to proposed transport permits, Missouri currently requires a license for transport. Regulations scheduled to be published 3/25/88 will change these "U"s to "R"s.

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Table 3
Regulated Activities

State	Financial Assurances	Spill Management	Closure Requirements	Packaging & Labeling Requirements	Storage Facilities	Record Keeping Requirements	Transportation Requirements
ALABAMA							
ALASKA				R			
ARIZONA							
ARKANSAS			R		R		
CALIFORNIA	R	R	R	R	R		R
COLORADO	U	U		U	U	U	
CONNECTICUT		U		U	U	U	U
DELAWARE				U	U	U	U
D.C.							
FLORIDA	U	U	U	R	U	U	U
GEORGIA				R			
HAWAII							
IDAHO							
ILLINOIS						R	R
INDIANA	U		U		U	U	
IOWA							
KANSAS				R		R	
KENTUCKY							
LOUISIANA	U	U	U	U	U	U	U
MAINE		U		U	U	U	
MARYLAND				U		U	
MASSACHUSETTS		U		R	R		R
MICHIGAN							
MINNESOTA				U	U		U
MISSISSIPPI				R			
MISSOURI (1)	U*	R		U*	U	U	R
MONTANA							
NEBRASKA				R			
NEVADA				R			
NEW HAMPSHIRE		R	R		R	R	R
NEW JERSEY	U	U	U	R	U	U	U
NEW MEXICO			U	U		U	U
NEW YORK	U	U		U	U	U	R
NORTH CAROLINA							
NORTH DAKOTA		U		R	R		R
OHIO				U		U	U
OKLAHOMA	R		R			R	R
OREGON		U		U	R		
PENNSYLVANIA	R	R	R	R	R	R	R
RHODE ISLAND				R	R	R	R
SOUTH CAROLINA				U	U	U	U
SOUTH DAKOTA							
TENNESSEE		R	R	R	R	R	R
TEXAS			R	R		U	U
UTAH				U			
VERMONT		R				R	R
VIRGINIA	U	U	U	U	U	U	U
WASHINGTON							
WEST VIRGINIA				U	U	U	U
WISCONSIN	R	R	R				
WYOMING							

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Table 4
Methods of Treatment and Disposal: Part I

EXHIBIT # 7
4/5/89 pg.15 of 16

State	Incineration	Specifies Ash Control	Specifies Performance Standards	Steam Sterilization	Specified Time/Temperature Pressure
ALABAMA	R				
ALASKA	R				
ARIZONA					
ARKANSAS	R			R	R
CALIFORNIA					
COLORADO		U	U	U	U
CONNECTICUT	U	U	U	U	
DELAWARE	U	U	U	U	U
D.C.	U		U		
FLORIDA	R		U	R	U
GEORGIA	R				
HAWAII					
IDAHO					
ILLINOIS	R	R	R	R	R
INDIANA	R	R	R		
IOWA					
KANSAS	R	R	R	R	
KENTUCKY	R			R	
LOUISIANA	U	U	U	U	U
MAINE	U		R	U	
MARYLAND	U			U	
MASSACHUSETTS					
MICHIGAN					
MINNESOTA	R			R	
MISSISSIPPI	R				
MISSOURI (1)	U*	U*	U*	U*	U*
MONTANA					
NEBRASKA	R				
NEVADA					
NEW HAMPSHIRE	R	R	R	R	
NEW JERSEY	R	R	R	U	U
NEW MEXICO			U		
NEW YORK	R		R	R	R
NORTH CAROLINA	R	R		R	
NORTH DAKOTA	R		R		
OHIO	R	U	U	U	U
OKLAHOMA	R	R	R		
OREGON	U	U	U	U	U
PENNSYLVANIA	R	R	R	R	
RHODE ISLAND	R			R	
SOUTH CAROLINA	U	U		U	U
SOUTH DAKOTA					
TENNESSEE	R	R	R	R	R
TEXAS	U				
UTAH					
VERMONT					
VIRGINIA	U	U	U	U	
WASHINGTON	R				
WEST VIRGINIA	U		U	U	U
WISCONSIN	R	R	R	U	
WYOMING					

NOTES

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Table 5
Methods of Treatment and Disposal: Part II

State	Chemical Treatment	Pretreatment Before Landfilled	Double Bagged
ALABAMA			
ALASKA		R	
ARIZONA			
ARKANSAS	R		R
CALIFORNIA			
COLORADO	U		
CONNECTICUT	U	U	U
DELAWARE	U	U	U
D.C.			
FLORIDA	U	R	U
GEORGIA			
HAWAII			
IDAHO			
ILLINOIS	R	R	
INDIANA		U	
IOWA			
KANSAS		R	R
KENTUCKY			
LOUISIANA	U	U	U
MAINE		U	
MARYLAND	U	U	U
MASSACHUSETTS			
MICHIGAN			
MINNESOTA		R	
MISSISSIPPI		R	
MISSOURI	U	R	
MONTANA			
NEBRASKA			
NEVADA		R	R
NEW HAMPSHIRE	R	R	R
NEW JERSEY	U	R	R
NEW MEXICO	U	U	U
NEW YORK		R	U
NORTH CAROLINA		R	
NORTH DAKOTA			
OHIO	U	U	U
OKLAHOMA			
OREGON	U	U	U
PENNSYLVANIA	R	R	R
RHODE ISLAND		R	
SOUTH CAROLINA	U	U	U
SOUTH DAKOTA			
TENNESSEE	R	R	R
TEXAS	U	U	R
UTAH			
VERMONT			
VIRGINIA		U	
WASHINGTON			
WEST VIRGINIA		U	U
WISCONSIN	U		
WYOMING			

KEY TO TABLE

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Amendments to House Bill No. 676
Third Reading Copy

Requested by Rep. Raney
For the Senate Committee on Natural Resources

April 5, 1989

I. Page 3.

Following: line 8

Insert: " It is the intent of the legislature that gloves, gowns, and other items routinely used in health care procedures not be considered infectious waste unless in the judgment of the health care professional the particular circumstances under which the items were used dictate that they be managed as infectious waste."

Rationale: Further emphasizes the judgment and discretion of the health care professional to determine if these items need to be managed as infectious waste.

II. Page 8.

Following: line 11

Insert: "contaminated"

Rationale: Clarifies that only contaminated isolation waste is to be defined as infectious.

Page 8, line 14.

Following: "KNOWN"

Insert: "by the health care professional"

Rationale: See comments to amendment #1

Page 8, line 20.

Following: "sterile"

Insert: "noninfectious"

Rationale: Provides consistency with remainder of the bill

Page 11, line 12.

Following: "STEAM"

Insert: "or chemical"

Rationale: Indicates that chemical sterilization methods are acceptable.

6. Page 17, line 3.

Strike: "A"

Insert: "Except as provided in subsection (4), a"

Rationale: See amendment #7

7. Page 19.

Following: line 1

Insert: " (4) Until July 1, 1991, a landfill is not subject to the infectious waste management fee for the authorized disposal of not more than 2,000 pounds of infectious waste per generator per year."

Rationale: Exempts landfills from paying the disposal fee for any continued use of landfills for infectious waste disposal, as authorized by amendment #9

8. Page 21, lines 17, 22, and 25.

Strike: "50"

Insert: "100"

Rationale: Applies the annual reporting requirement to facilities generating more than 100 pounds a month, rather to those generating more than 50 pounds a month. This higher limit would generally remove doctors' and dentists' offices from the reporting requirement and is also consistent with other figures in the bill.

9. Page 31.

Following: line 17

Insert: " (7) [This act] does not prohibit, before July 1, 1991, the disposal of not more than 2,000 pounds of infectious waste per year in a landfill, with the consent of the landfill operator, by the person generating the waste if the landfill had been disposing of the waste generated by the person prior to January 1, 1989."

Rationale: Allows small and medium-sized generators of infectious waste to continue using landfills for disposal during the next biennium.

Amendment to House Bill 676
Proposed by
Montana Dental Association

page 8, lines 13 through 15

Strike: "AND" on line 13 through "CONTAMINATED" on
line 15

page 8

Following: "Infectious waste also includes any item that
might not normally be considered infectious
waste but that was, in the judgment of the
health care professional, used under particu-
lar circumstances that dictate that it be
managed as infectious waste."

Rationale: this amendment deletes some extremely vague
language about wastes generated in connection with patient
care which could certainly include the gloves, masks, and
other disposable clothing routinely worn by dental office per-
sonnel. No one favoring the passage of this bill has wanted
dental office gloves, etc. to be included as infectious wastes
in the 99.9% of the situations they are used for. The problem
has been how to write language which excludes these items when
they should be excluded.

The revised definition of infectious wastes under this
amendment will be much closer to the EPA's categories of
infectious wastes regulated, in a 10-state area, under the
Medical Wastes Tracking Act of 1988. This is also desirable
because that record-keeping forms or software will be more readily
available in a style which conforms to EPA requirements.

The Dental Association does not favor placing such language
in the statement of intent. It should go into the bill
itself.

DATE 4-5-89COMMITTEE ON NATURAL RESOURCES

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Kay Wrenberg	Wife	HB 757	✓	
John Brunner	M W R A	*	✓	
John Sample	M A T A	HB 757	✓	
W. Meland	Headwaters Ag Committee	HB 757	✓	
Stockton & Polly White	CAP	HB 676	✓	
Pam Langley	Mt. Farmers Union Mt. Ag Business, Mt. Grain Elevator	H 757	✓	
Chuck Mexja	Mt Grain Growers Assn	H 757	X	
Marc Montgomery	Livingston Residents	HB 676	✓	
Dan Porter	CAP	HB 676	✓	
MAX Bauer Jr	Brown's Terris Tractor	HB 676	✓	
Everett M. Scotland	Mt Dept Ag	HB 757	✓	
Bill Plucker	MS	HB 757		
Roger Vigney	Mt Dental Assoc	676	Amend	
Bonnie Lippy	Mt Funeral Directors	676	reinitial w/ amendment	
Henry Matheson	AERO	757	✓	
Jim Ahnert	Mt. Hospital Assoc	676	✓	
Robert Kessler	Montana Dental Assoc	676	Amend	
Wm E. Zapp	MONTANA DENTAL ASSOCIATION	676	Amend	
Kim Wilh	Snow Club	676 757 757	✓	
Lerna Frank	Farm Bureau	HB 757	✓	
Martin Skinner MD	Mt. MED. Assn	HB 676	✓	
See Wengauke	Mt Seed Warehouse Contractors	HB 676	✓	
Don Ingels	Mt Chamber of Commerce	HB 752 676	Monitor	
Chris Kaufmann	MEIC	HB 752 676	✓	
Chris Kaufmann	MEIC	757	✓	
Marvin Borber	H P H	757	✓	

(Please leave prepared statement with Secretary)

MINUTES

MONTANA SENATE 51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Thomas F. Keating, on April 10, 1989, at 1:00 p.m., Room 405, in the State Capitol.

ROLL CALL

Members Present: Senators: Thomas Keating, Loren Jenkins, Loren Stimatz, Pete Story, Bill Yellowtail, Cecil Weeding, Dorothy Eck, and Jerry Noble.

Members Excused: Senator Larry Tveit

Members Absent: Senators: Fred Van Valkenburg, Darryl Meyer, Elmer Severson.

Staff Present: Bob Thompson and Helen McDonald

EXECUTIVE ACTION

HB 757

Senator Weeding moved HB 757 be concurred in. Motion carried.

HB 752

Senator Story said HB 676 and HB 752 were inspired by a problem in Livingston.

Senator Story moved amendments to HB 752 that provided for local approval of disposal of waste generated from outside the region and established a moratorium on out-of-state waste.

Bob Thompson explained the amendments. Mr. Thompson added that federal commerce clause concerns exist with each amendment, but that the significant commerce clause problem would occur with a permanent ban on transporting waste into Montana, which Senator Story is amending.

Senator Jenkins asked if amendments (Exhibits #1 and #2) would coordinate.

Bob Thompson said the amendments would coordinate.

Senator Story moved amendments #1 and #2. Motion carried on #1.

Senator Keating asked for discussion on amendment #2.

Senator Noble asked if it would be illegal if someone brought a load of junk tires into Montana and dumped them?

Senator Story said it might be illegal if the tires were dumped in a landfill.

Senator Noble said getting rid of tires is a big problem. It's getting to be a big business because tires are difficult to dispose of.

Senator Story said there are ways of getting around this law. Someone can buy some cheap property somewhere and put up a sign "used tires for sale".

Motion carried on amendment #2.

Senator Keating asked about the fee of \$1.00 a ton on solid waste and wondered if it shouldn't be higher.

Senator Story said there is some interregional business going on. The state cannot charge a higher fee without interfering with present practices.

Senator Keating asked if the department will get a FTE for this bill.

Senator Story said no, but the department would get an FTE with the infectious waste bill, which has not passed the committee yet.

Senator Story made a motion that HB 752 as amended be concurred in. Senator Tveit and Senator Noble voted no. Motion carried.

HB 676

Bob Thompson said there are two sets of amendments. Representative Raney's amendment (Exhibit #3A) and Montana Dental Association's amendment. (Exhibit #3B)

Senator Keating asked Bonnie Tippy, Montana Funeral Directors, about her objection to mortuaries being included in this act. Mortuaries will be exempt from this bill until 1991. Senator Keating asked her for some research with regard to the controls on morticians.

Bonnie Tippy said funeral homes are now regulated by at least three entities: the State Board of Morticians, OSHA, and the Federal Trade Commission. There is not much infectious waste that comes from funeral homes now. Everything is almost sterile before it leaves the funeral home. The amendment (Exhibit #3D) would take care of a significant problem. On page 11, there was a House amendment offered by the health department. The Department of Health and Environmental Sciences was concerned that someone would dump hazardous or infectious waste in the sewage system. This amendment also included funeral directors, and the mortuaries, which would require holding tanks in order to do embalming. That is basically what the morticians want amended. Mortuaries generate very little infectious waste.

Senator Keating asked if HB 752, which prohibits outside waste, includes infectious waste?

The intent of HB 676 would be to start establishing rules and regulations for the handling of infectious waste instate. Senator Keating commented on Senator Story's remark that "if we passed HB 752, we may not need HB 676". He wondered about that.

Senator Story remarked that the people of Livingston were concerned that HB 752 would not prevent the importation of infectious waste. Senator Story said the amendment will prevent new waste from coming into the state. HB 752 will significantly reduce the amount of plastic that is being burned in Livingston's incinerator and that was the resident's concern. The Montana legislature will probably be passing an infectious waste bill two years from now because probably the Environmental Protection Agency and Congress will require it. If the legislature doesn't pass this bill this session, then they will have two years to do it in the cheapest and most practical way, which will be in accordance with Congress.

Senator Keating said it seemed to him the infectious waste legislation was drafted primarily with a local issue in mind and was trying to involve other parts of the state. Senator Keating said the testimony of the medical people was that, if infectious waste was managed by state rules and regulations, it would increase the cost of hospitalization, particularly in the smaller hospitals. It seemed to him that the bill was focused on doctors, dentists, and medical people who are the generators of infectious waste because they are taking care of sick people. He commented that the medical people are healing the sick and generating a waste product and disposing of it in a way that is not causing more sick people. Senator Keating doesn't see the need for starting a statewide regulatory body over something that isn't causing a problem.

Senator Noble agreed with Senator Keating's comments. Most of the hospitals in the state are losing money and this legislation would charge the hospitals \$2,000 for 5 tons of infectious waste. Senator Noble felt this was excessive regulation.

Senator Yellowtail asked to hear from Chris Kaufman.

Chris Kaufman said no one was aware that this bill, when first drafted, would impact funeral directors. The drafters did not know exactly what kinds of waste were generated by morticians and it was decided to exempt them until more was known about the impact of the industry. She stated that only five or six hospitals in Montana would be charged the \$2,000 fee and the charge for the smaller hospitals would be \$250.

Senator Jenkins asked about the impact of this fee on smaller hospitals?

Chris Kaufman said she contacted Jim Ahern in regard to this situation. With Representative Raney's amendment, the hospitals can continue their current practice of disposing waste in landfills.

Senator Jenkins asked about the disposal of animal carcasses?

Ms. Kaufman said that the professional would know whether or not the carcass was infected with a disease that would be harmful to a human being.

Senator Yellowtail moved Representative Raney's amendment. (Exhibit 3A) Motion carried.

Senator Noble moved amendment proposed by the Montana Dental Association. (Exhibit 3B) Motion carried.

Senator Noble moved amendment Senator Keating's suggestion to exempt morticians permanently. (Exhibit 3C) Motion carried. Senator Yellowtail voted no.

Senator Noble moved that HB 676 as amended not be concurred in. Motion carried. Roll call vote. (Exhibit #4)

ADJOURNMENT

Adjournment At: 1:00 p.m.


Thomas F. Keating, Chairman

NATURAL RESOURCES

COMMITTEE

50~~st~~ LEGISLATIVE SESSION -- 1989Date 4-10-89

NAME	PRESENT	ABSENT	EXCUSED
Chairman Tom Keating	✓		
Vice-Chairman Larry Tveit	Attn		✓
Senator Fred VanValkenburg		✓	
Senator Loren Jenkins	✓		
Senator Darryl Meyer		✓	
Senator Lawrence Stimatz	✓		
Senator Pete Story	✓		
Senator Bill Yellowtail	✓		
Senator Elmer Severson		✓	
Senator Cecil Weeding	✓		
Senator Dorothy Eck	✓		
Senator Jerry Noble	✓		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

April 11, 1989

MR. PRESIDENT:

We, your committee on Natural Resources, having had under consideration HB 757 (third reading copy -- blue), respectfully report that HB 757 be concurred in.

Sponsor: Giacometto (Weeding)

BE CONCURRED IN

Signed: 

Thomas F. Keating, Chairman

SENATE STANDING COMMITTEE REPORT

April 11, 1989

MR. PRESIDENT:

We, your committee on Natural Resources, having had under consideration HB 752 (third reading copy -- blue), respectfully report that HB 752 be amended and as so amended be concurred in:

Sponsor: Raney (Story)

1. Title, line 12.

Following: "FEE;"

Insert: "REQUIRING LOCAL APPROVAL FOR INCINERATION OR DISPOSAL OF SOLID WASTE GENERATED OUTSIDE THE REGION; ESTABLISHING A MORATORIUM ON TRANSPORT OF SOLID WASTE INTO MONTANA;"

2. Page 9.

Following: line 3

Insert: "NEW SECTION. Section 6. Local approval required for incineration or disposal of solid waste generated outside the region. (1) An owner or operator of a solid waste management facility who proposes to incinerate or dispose of solid waste generated outside the solid waste disposal region in which the facility is located shall, before receiving the waste, apply for and receive approval from the local government or governments having jurisdiction over the facility.

(2) The local government or governments may approve the incineration or disposal of solid waste from outside the region, if the local government or governments find that incineration or disposal of the solid waste is consistent with local and state solid waste management goals and results in equivalent or improved protection of public health, safety, welfare, and the environment within the jurisdiction.

NEW SECTION. Section 7. Moratorium on certain interstate transport of solid waste(1) The state of Montana recognizes the importance of providing for disposal or incineration of solid waste in a manner that protects Montana's public health, safety, welfare, and environment. Although the state of Montana also recognizes that, under appropriate conditions, the transportation of out-of-state solid waste into Montana may not conflict with this goal, it is imperative that the state undertake a legislative study of solid waste regulation and management, further develop regional and statewide solid waste management goals and plans, and adopt rules implementing [this act] before allowing solid waste importation beyond current levels.

(2) Except as provided in subsection (3), a person may not transport solid waste into Montana until October 1, 1991.

(3) A person who transported solid waste into Montana before [the effective date of this act] may continue to transport solid waste into Montana subject to the limitation that the amount he transports into Montana during any calendar year does not significantly exceed the amount he transported into Montana during calendar year 1988."

Renumber: subsequent sections

3. Page 12, line 22.

Strike: "SECTION"

Insert: "Sections"

Following: "6"

Insert: "through 8"

Strike: "IS"

Insert: "are"

4. Page 12, line 25.

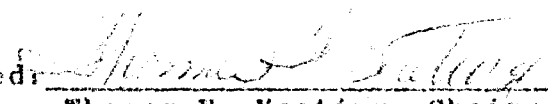
Strike: "SECTION"

Insert: "sections"

Following: "6"

Insert: "through 8"

AND AS AMENDED BE CONCURRED IN

Signed: 

Thomas F. Keating, Chairman

SENATE STANDING COMMITTEE REPORT

page 1 of 2
April 12, 1989

MR. PRESIDENT:

We, your committee on Natural Resources, having had under consideration HE 676 (third reading copy -- blue), respectfully report that HB 676 be amended and as so amended be not concurred in:

Sponsor: Raney (Keating)

1. Page 3.

Following: line 8

Insert: "It is the intent of the legislature that gloves, gowns, and other items routinely used in health care procedures are not considered infectious waste unless, in the judgment of a health care professional, the particular circumstances under which the items were used dictates that they be managed as infectious waste."

2. Page 8.

Following: line 11

Insert: "and contaminated"

3. Page 8, lines 13 through 15

Following: "DISEASES" on line 13

Strike: "; AND" on line 13 through "CONTAMINATED" on line 15

4. Page 8, line 20.

Strike: "sterile"

Insert: "noninfectious"

Following: "."

Insert: "Infectious waste also includes any item that is not normally considered infectious waste but, in the judgment of a health care professional, was used in a particular circumstance that dictates that it be managed as infectious waste."

5. Page 11, line 12.

Following: "STEAM"

Insert: "or chemical"

6. Page 17, line 3.

Strike: "A"

Insert: "Except as provided in subsection (4), a"

7. Page 19.

Following: line 1

Insert: "(4) Until July 1, 1991, a landfill is not subject to the infectious waste management fee for the authorized disposal of not more than 2,000 pounds of infectious waste per generator per year."

SENATE COMMITTEE ON NATURAL RESOURCES, HB 676

April 12, 1989

page 2 of 2

8. Page 21, lines 17, 22, and 25.

Strike: "50"

Insert: "100"

10. Page 31, line 17.

Strike: "UNTIL JULY 1, 1991"

11. Page 31.

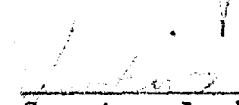
Following: line 17

Insert: " (7) [This act] does not prohibit, before July 1, 1991, the disposal of not more than 2,000 pounds of infectious waste per year in a landfill, with the consent of the landfill operator, by the person generating the waste if the landfill had been disposing of the waste generated by the person prior to January 1, 1989."

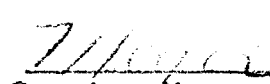


Senator Keating

Senator Tveit



Senator Jenkins



Senator Meyer

Senator Story



Senator Severson

Senator Noble

MAJORITY REPORT
AND AS AMENDED BE NOT CONCURRED IN

Signed: 

Thomas F. Keating, Chairman

ADOPT

REJECT

SENATE STANDING COMMITTEE REPORT

page 1 of 2
April 12, 1989

MR. PRESIDENT:

We, your committee on Natural Resources, having had under consideration HB 676 (third reading copy -- blue), respectfully report that HB 676 be amended and as so amended be concurred in:

Sponsor: Raney (Eck)

1. Page 3.

Following: line 8

Insert: "It is the intent of the legislature that gloves, gowns, and other items routinely used in health care procedures are not considered infectious waste unless, in the judgment of a health care professional, the particular circumstances under which the items were used dictates that they be managed as infectious waste."

2. Page 8.

Following: line 11

Insert: "and contaminated"

3. Page 8, lines 13 through 15

Following: "DISEASES" on line 13

Strike: "; AND" on line 13 through "CONTAMINATED" on line 15

4. Page 8, line 20.

Strike: "sterile"

Insert: "noninfectious"

Following: "."

Insert: "Infectious waste also includes any item that is not normally considered infectious waste but, in the judgment of a health care professional, was used in a particular circumstance that dictates that it be managed as infectious waste."

5. Page 11, line 12.

Following: "STEAM"

Insert: "or chemical"

6. Page 17, line 3.

Strike: "A"

Insert: "Except as provided in subsection (4), a"

7. Page 19.

Following: line 1

Insert: "(4) Until July 1, 1991, a landfill is not subject to the infectious waste management fee for the authorized disposal of not more than 2,000 pounds of infectious waste per generator per year."

SENATE COMMITTEE ON NATURAL RESOURCES, HB 676

April 12, 1989

page 2 of 2

8. Page 21, lines 17, 22, and 25.

Strike: "50"

Insert: "100"

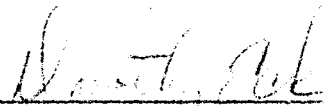
10. Page 31, line 17.

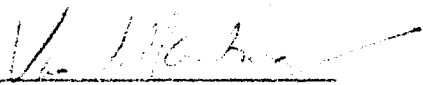
Strike: "UNTIL JULY 1, 1991"

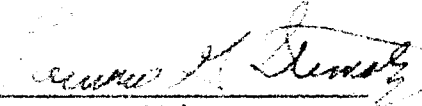
11. Page 31.

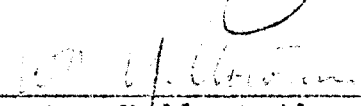
Following: line 17

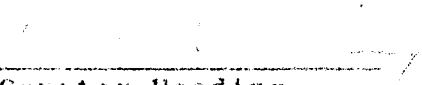
Insert: " (7) [This act] does not prohibit, before July 1, 1991, the disposal of not more than 2,000 pounds of infectious waste per year in a landfill, with the consent of the landfill operator, by the person generating the waste if the landfill had been disposing of the waste generated by the person prior to January 1, 1989."


Senator Eck


Senator Van Valkenburg


Senator Stimatz


Senator Yellowtail


Senator Weeding

MINORITY REPORT
AND AS AMENDED BE CONCURRED IN

ADOPT

REJECT

Amendments to House Bill No. 752

Third Reading Copy

Requested by Senator Story

For the Senate Committee on Natural Resources

April 10, 1989

1. Title, line 12.

Following: "FEE;"

Insert: "REQUIRING LOCAL APPROVAL FOR INCINERATION OR DISPOSAL
OF SOLID WASTE GENERATED OUTSIDE THE REGION;

2. Page 9.

Following: line 3

Insert: "NEW SECTION. Section 6. Local approval required for
incineration or disposal of solid waste generated outside
the region. (1) An owner or operator of a solid waste
management system who proposes to incinerate or dispose of
solid waste generated outside the solid waste disposal
region in which the facility is located shall, before
receiving the waste, apply for and receive approval from the
local government or governments having jurisdiction over the
facility.(2) The local government or governments may approve
the incineration or disposal of solid waste from outside the
region if the local government or governments find that
incineration or disposal of the solid waste is consistent
with local and state solid waste management goals and
results in equivalent or improved protection of public
health, safety, welfare, and the environment within the
jurisdiction."

Renumber: subsequent sections

4. Page 12, line 22.

Strike: "SECTION"Insert: "Sections"Following: "6"

Insert: "and 7"

Strike: "IS"

Insert: "are"

5. Page 12, line 25.

Strike: "SECTION"Insert: "sections"Following: "6"

Insert: "and 7"

Amendments to House Bill No. 87520 HB 752
Third Reading Copy

Requested by Senator Story
For the Senate Committee on Natural Resources
April 10, 1989

1. Title, line 12.

Following: "FEE;"

Insert: "ESTABLISHING A MORATORIUM ON TRANSPORT OF SOLID WASTE
INTO MONTANA;"

2. Page 9.

Following: line 3

Insert: "NEW SECTION. Section 6. Moratorium on certain interstate transport of solid waste. (1) The state of Montana recognizes the importance of providing for disposal or incineration of solid waste in a manner that protects Montana's public health, safety, welfare, and environment. Although the state of Montana also recognizes that, under appropriate conditions, the transportation of out-of-state solid waste into Montana might not conflict with this goal, it is imperative that the state undertake a legislative study of solid waste regulation and management, further develop regional and statewide solid waste management goals and plans, and adopt rules implementing [this act] before solid waste importation beyond current levels is allowed.

(2) Except as provided in subsection (3), a person may not transport solid waste into Montana until October 1, 1991.

(3) A person who transported solid waste into Montana before [the effective date of this act] may continue to transport solid waste into Montana subject to the limitation that the amount he transports into Montana during any calendar year does not significantly exceed the amount he transported into Montana during calendar year 1988."

Renumber: subsequent sections

4. Page 12, line 22.

Strike: "SECTION"

Insert: "Sections"

Following: "6"

Insert: "and 7"

Strike: "IS"

Insert: "are"

5. Page 12, line 25.

Strike: "SECTION"

Insert: "sections"

Following: "6"

Insert: "and 7"

Amendments to House Bill No. 676
Third Reading Copy

Requested by Rep. Raney
For the Senate Committee on Natural Resources

April 5, 1989

1. Page 3.

Following: line 8

Insert: " It is the intent of the legislature that gloves, gowns, and other items routinely used in health care procedures not be considered infectious waste unless in the judgment of the health care professional the particular circumstances under which the items were used dictate that they be managed as infectious waste."

Rationale: Further emphasizes the judgment and discretion of the health care professional to determine if these items need to be managed as infectious waste.

2. Page 8.

Following: line 11

Insert: "contaminated"

Rationale: Clarifies that only contaminated isolation waste is to be defined as infectious.

3. Page 8, line 14.

Following: "KNOWN"

Insert: "by the health care professional"

Rationale: See comments to amendment #1

4. Page 8, line 20.

Strike: "sterile"

Insert: "noninfectious"

Rationale: Provides consistency with remainder of the bill

5. Page 11, line 12.

Following: "STEAM"

Insert: "or chemical"

Rationale: Indicates that chemical sterilization methods are also acceptable.

6. Page 17, line 3.

Strike: "A"

Insert: "Except as provided in subsection (4), a"

Rationale: See amendment #7

7. Page 19.

Following: line 1

Insert: " (4) Until July 1, 1991, a landfill is not subject to the infectious waste management fee for the authorized disposal of not more than 2,000 pounds of infectious waste per generator per year."

Rationale: Exempts landfills from paying the disposal fee for any continued use of landfills for infectious waste disposal, as authorized by amendment #9

8. Page 21, lines 17, 22, and 25.

Strike: "50"

Insert: "100"

Rationale: Applies the annual reporting requirement to facilities generating more than 100 pounds a month, rather to those generating more than 50 pounds a month. This higher limit would generally remove doctors' and dentists' offices from the reporting requirement and is also consistent with other figures in the bill.

9. Page 31.

Following: line 17

Insert: " (7) [This act] does not prohibit, before July 1, 1991, the disposal of not more than 2,000 pounds of infectious waste per year in a landfill, with the consent of the landfill operator, by the person generating the waste if the landfill had been disposing of the waste generated by the person prior to January 1, 1989."

Rationale: Allows small and medium-sized generators of infectious waste to continue using landfills for disposal during the next biennium.

Amendment to House Bill 676
Proposed by
Montana Dental Association

1. page 8, lines 13 through 15
Strike: "AND" on line 13 through "CONTAMINATED" on line 15
2. page 8
Following: "Infectious waste also includes any item that might not normally be considered infectious waste but that was, in the judgment of the health care professional, used under particular circumstances that dictate that it be managed as infectious waste."

Rationale: this amendment deletes some extremely vague language about wastes generated in connection with patient care which could certainly include the gloves, masks, and other disposable clothing routinely worn by dental office personnel. No one favoring the passage of this bill has wanted dental office gloves, etc. to be included as infectious wastes in the 99.9% of the situations they are used for. The problem has been how to write language which excludes these items when they should be excluded.

The revised definition of infectious wastes under this amendment will be much closer to the EPA's categories of infectious wastes regulated, in a 10-state area, under the Medical Wastes Tracking Act of 1988. This is also desirable in that record-keeping forms or software will be more readily available in a style which conforms to EPA requirements.

The Dental Association does not favor placing such language in the statement of intent. It should go into the bill itself.

SENATE NATURAL RESOURCES

EXHIBIT NO. 3C

DATE 4-10-89

BILL NO. HB 676

Amendment to House Bill 676 (no. 3)
Proposed By Senator Keating
April 10, 1989

1. Page 31, line 17.
Strike: "UNTIL JULY 1, 1991"

Passed by the Senate Natural Resources Committee. However,
the committee voted to not concur.

SENATE NATURAL RESOURCES
EXHIBIT NO. # 3 D
DATE 4-10-89
BILL NO. HB 676

Amend HB 676

The funeral directors would urge the Committee to revise the amendment to HB 676 authored by the Health Department on page 11, lines 14-19, so that it reads as follows:

(c) for THE NONCOMMERCIAL DISPOSAL OF ~~SMALL/QUANTITIES~~
~~OF~~ liquid or semiliquid waste GENERATED ~~INCIDENTALLY~~
pursuant TO A HEALTH CARE or mortuary PROCEDURE, provided that
secondary treatment is available, that federal, state, or
local regulations do not prohibit the discharge, and that
aerosol formation does not occur during the discharge;

NOT ACTED ON
IN COMMITTEE

ROLL CALL VOTE

SENATE NATURAL RESOURCES

SENATE COMMITTEE _____

NATURAL RESOURCES

do not concern
#4
4-10-89
BILL NO. HB 676

Date 4-10-89 Bill No. HB 676 Time _____

NAME	YES	NO
Vice-Chairman Larry Tveit	✓	<i>KM</i>
Senator Fred VanValkenburg		✓
Senator Loren Jenkins	✓	
Senator Darryl Meyer	✓	
Senator Lawrence Stimatz		✓
Senator Pete Story	✓	
Senator Bill Yellowtail		✓
Senator Elmer Severson	✓	
Senator Cecil Weeding		✓
Senator Dorothy Eck	<i>DK</i>	✓ <i>Eck</i>
Senator Jerry Noble	✓	
Chairman Tom Keating	✓	
	7	5

Secretary _____

Chairman _____

Motion: do not concern as amended
